TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~428~~. 83

GIDEON PUTNAM, JOHN S. SHAW, ET AL., APPELLANTS,

vs.

CHARLES E. BILL, TRUSTEE, ETC.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED APRIL 25, 1873.

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1 Pleas of the United States circuit court for the seventh judicial circuit and district of Indiana.

Pleas of the United States circuit court for the seventh judicial circuit and district of Indiana, begun, continued, and holden at Indianapolis, in said district, on the twenty-first day of November, eighteen hundred and seventy-two, being the 12th judicial day of the November term for eighteen hundred and seventy-two. Present, the honorable Thomas Dr'mmond, judge of said court.

CHARLES E. BILL, TRUSTEE,
vs.
NEW ALBANY AND SALEM R. R. CO., JAMES BROOKS, and JOHN B. ANDERSON. } In chancery.

Be it remembered that heretofore, to wit, at the August rules of said court, came the complainants, and file in the clerk's office of said circuit court their certain bill of complaint against the said defendants, which bill of complaint is in the words and figures following, to wit:

2 To the judge of the circuit court of the United States for the district of Indiana, in chancery sitting:

Douw D. Williamson, of the city of New York, and a citizen of the State of New York, brings this his bill of complaint against the New Albany and Salem Railroad Company, a body-corporate, legally constituted and organized by and in conformity with acts of the general assembly of the State of Indiana, and having its principal office and place of business at the city of New Albany, in the State and district of Indiana, a citizen of said State and district of Indiana, James Brooks, and John B. Anderson, respectively citizens of said State and district of Indiana.

And thereupon your orators complain and says that the said defendant, the New Albany and Salem Railroad Company, owns and has in operation and use a line of railroad commencing at New Albany, on the Ohio River, and extending from thence to Michigan City, on Lake Michigan, of the length of two hundred and eighty-eight miles, or thereabout; also, a branch of its said road, not yet in operation, extending from Gosport, in Owen County, to Indianapolis, of the length of forty-three miles, or thereabouts. That, in connection with its said road and branch, and in the operation and use thereof, said railroad company also owns and necessarily employs and uses a large amount of rolling-stock, consisting of a large number of locomotives, engines, and cars of various descriptions, with the tools and implements belonging thereto and used therewith; also, various machine-shops, and shops used for making and repairing of engines, cars, and machinery, with a great variety of tools and implements belonging thereto and necessarily employed therein.

Also, a large number of turn-tables, water-stations, station-houses, and other structures, together with supplies of fuel, and other necessary articles, needful to be used in operating the road and branch aforesaid, and other business of said company, all of which, together with the right and power to keep up (the same) and sustain the same, and to charge and recover freight and fare for transporting and carrying commodities of every description, live-stock, and passengers, as regulated by the charter and amendments thereto of said company, and the laws of the State of Indiana, are corporate franchises of said company, and all taken together, are so held, used, and employed by said com-

3 pany, that they do not admit of and cannot be severed, separated, or disconnected from each other, without being rendered greatly less valuable, wasted, and deteriorated, on which account your orator prays that in any sale or disposition to be made thereof under and in pursuance of the prayer of this his bill of complaint, the same may be sold or otherwise disposed of as an entirety, and in such manner that all of said corporate franchises may pass to and vest in the purchaser or purchasers as a body-corporate, to be held, used, employed, and carried on, and subject to be sold and again disposed of by such purchaser or purchasers as a body-corporate, to and for the same uses, and subject to the same restrictions and regulations to and for which the same are now held, used, and enjoyed by the said New Albany and Salem Railroad Company, but discharged of and from all liability in the hands of said purchaser or purchasers, to be subject to the debts and liabilities of said New Albany and Salem Railroad Company, under its present organization.

First mortgage.

Your orator further states that said company, on or about the eighth day of February, A. D. 1851, being engaged in constructing that part of its railroad which lies between New Albany and Gosport aforesaid, being of the length of one hundred and twelve and seventy-one hundredths miles, and being in need of money to enable it to purchase and transport iron rails and chairs, and other necessary iron and machinery to equip said road, did, for that purpose, and for such other purposes as the wants of the company might require on that part of their line aforesaid, resolve to borrow money to an amount not exceeding five hundred thousand dollars, the repayment thereof to be secured by certain bonds not exceeding five hundred in number, for the sum of one thousand dollars each, bearing interest at ten per centum per annum, payable semi-annually in the city of New York, to be executed by said company, subject to a clause to be contained therein permitting the holders thereof to exchange the same at par for shares of stock in said company at any time before maturity.

That to secure the payment of the said bonds so to be issued by said company, the said New Albany and Salem Railroad Company
4 made, executed, and delivered to your orator its certain deed of trust, which he, your orator, holds in his possession, ready to be exhibited and produced, as may be required in this behalf, whereby the said company, after reciting that it had resolved to borrow money as above stated, and to issue its bonds therefor, granted, bargained, sold, transferred, and conveyed to your orator and his successors in the trust thereby created, and assigns, all the following then present, and then in the future to be acquired property of the said company, pertaining to that part of its road which lies between New Albany and Gosport, that is to say:

Their road, made and to be made, including the right of way and land occupied thereby, together with the superstructure and tracks thereon, and all rails and other materials used therein, or procured therefor, inclusive of the iron rails purchased or to be purchased or paid for with the above-described bonds, or the money obtained therefor, and the machinery purchased with the same, bridges, viaducts, culverts, fences, depot-grounds, and buildings thereon, engines, tenders, cars, tools, materials, machinery, and all other personal property, right thereto and interest therein pertaining, as aforesaid, together with the tolls, rents,

or incomes to be had or levied therefrom, and all franchises, rights, and privileges of the said party of the first part, (said New Albany and Salem Railroad Company,) of, in, to, or concerning the same, but subject to a stipulation therein contained, to the effect that nothing therein contained should be construed to prevent said company from selling, hypothecating, or otherwise disposing of any surplus lands of the company not necessary to be retained for their roadway, depot-grounds, stations, nor required for the construction or convenient use of their road; nor from collecting money due the company for stock-subscriptions, or otherwise, provided they should diligently proceed to collect and faithfully apply all such means to the construction and equipment of their said road:

To have and to hold the said premises and every part thereof, with the appurtenances, to your orator, (the party of the second part,) his successors in said trust, and assigns, upon the following trusts, that is to say:

CONDITIONS.

In case said company should fail to pay the principal, or any part thereof, or any of the interest on any of said bonds, at the time when the same might become due and payable according to the tenor thereof, when demanded, then, after sixty days from such default, upon request of the holder of such bond, the said party of the second part, (your orator,) his successors in said trust, and assigns, shall enter into and take possession of all and every part of said premises and property, and as the attorney in fact or agent of said company, by himself, or agents, or substitutes, duly constituted, have, use, and employ the same, making, from time to time, all needful repairs, alterations, and additions thereto, and after deducting expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of all said bonds remaining unpaid; or your orator, his successors in said trust and assigns, at his or their discretion, might, on the written request of the holders of at least one-half of the bonds then unpaid and unconverted into stock, cause the said premises, or so much thereof as should be necessary to pay and discharge the principal and interest of all such of said bonds as might then be unpaid and unconverted as aforesaid, to be sold at public auction in the city of New Albany, in the State of Indiana, or in the city of New York, giving at least forty days' notice of the time, place, and terms of sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of said cities, and wherever else required by law, and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee-simple for the same, which should be a bar against the parties of the first part, their successors, and assigns, and all persons claiming under them, of all right, interest, and claim in or to said premises, or any part thereof; and that after deducting from the proceeds of said sale the costs and expenses thereof, and of managing said property, your orator (said trustee) should apply so much of the proceeds as might be necessary to the payment of said principal and interest due or unpaid on said bonds, and restore the residue thereof to said company.

That it was and is stipulated in and by said deed of trust, amongst other things, that in no case should any claim or advantage be taken of any valuation appraisement, or extension law, by the said company,

nor any injunction or stay of proceedings, or any process be applied for or obtained by them, to prevent such entry or sale as aforesaid.

6 And said company thereby covenanted to execute and deliver any further reasonable and necessary conveyance of the said premises, or any part thereof, to the said party (your orator) of the second part, his successors in said trust, and assigns, for more fully carrying into effect the objects of said deed of trust; particularly for the conveyance of any property acquired by said party of the first part (said company) subsequently to the date of said deed, and comprehended in the description contained in the premises thereof. That it is further, amongst other things, stipulated in and by said deed of trust, that your orator, his successors in said trust, or assigns, shall be entitled to receive proper compensation for every labor or service performed by him in the discharge of his trust, in case he should be compelled to take possession of said premises, or any part thereof, or manage the same.

That there are various other provisions and stipulations contained in said deed of trust, which your orator is advised are not material to be recited or set forth in this bill of complaint for any of the purposes of relief herein prayed for; but your orator, holding said deed in readiness to be exhibited as aforesaid, prays that the same be taken and received as a part of this his bill of complaint, for all purposes for which the same could properly be used in this behalf.

That said deed was executed under the corporate seal of said company, and your orator accepted the same and assumed and took upon himself the duty and burden of trustee under and according to the terms thereof, and caused and procured the same, within ninety days after the delivery thereof, to be duly recorded in the several counties of Floyd, Clark, Washington, Orange, Lawrence, Monroe, and Owen, within which that part of the line of said company's road so mortgaged and conveyed in trust to your orator as aforesaid, is located; to which records, also, your orator here refers, and he prays that the certificates of the several recorders of said counties of the fact of the record thereof by them, endorsed on said original deed, as required by law, be taken and received as part of this his bill of complaint. Your orator further states that said deed, before being recorded as aforesaid, and before delivery thereof to your orator as aforesaid, to wit, on the 17th day of February, A. D. 1851, was in due form of law acknowledged by said company by its secretary, George Lyman, before W'm A. Scribner, a notary public

7 for said Floyd County, who duly certified the fact of such acknowledgment under his official seal, and that said Lyman was, by said company, duly authorized in its behalf to make said acknowledgment, and that said acknowledgment was duly recorded with the deed as aforesaid. Also, that said deed was and is signed by James Brooks, the president of said company, and countersigned by the said George Lyman, secretary thereof as aforesaid.

Your orator further says that said company, in conformity with its resolution in that behalf recited as aforesaid, in said mortgage or deed of trust, and for the purposes therein also recited, did make and issue five hundred bonds, for the sum of one thousand dollars each, severally dated the day of A. D. 1851, bearing interest at the rate of ten per centum per annum, payable semi-annually in the city of New York on the first days of April and October of each year after the date thereof, according to coupons therefor attached to said bonds respectively; the principal of said bonds being, by the terms thereof, due and payable in said city of New York, as follows, to wit: $100,000 on the first day of

April, A. D. 1859; $100,000 on the first day of April, A. D. 1860; $100,000 on the first day of April, A. D. 1861; $100,000 on the first day of April, A. D. 1862; and $100,000 on the first day of April, A. D. 1863.

That said company, upon the faith and credit of said bonds, and of the said mortgage or deed of trust so made and delivered to your orator as a security for the payment thereof as aforesaid, borrowed from a large number of persons whose names are unknown to your orator divers large sums of money, amounting in the aggregate to a large sum of money, to wit, the sum of five hundred thousand dollars, and delivered said bonds to the persons from whom said loans were made, and the same are now outstanding and valid claims against said company, in the hands of a large number of holders, many of whose names are unknown to your orator. That said bonds and the coupons are severally, by the terms thereof, negotiable, and your orator as trustee is bound to protect the rights and interests of whomsoever are or may become holders thereof. That your orator is advised that said company has paid the interest on all of said bonds which accrued and became due prior to the first day of April, A. D. 1857, but that it has failed
8 to pay any part of the said interest which fell due on that day, and that the whole of the coupons for the said instalment of interest which fell due on that day are unpaid and outstanding, amounting to the aggregate sum of twenty-five thousand dollars, more than sixty days after the maturity of said coupons having transpired. That after said period of sixty days after the maturity of said coupons had elapsed, the holders of a large number of said bonds required your orator, as trustee as aforesaid, to enter upon and take possession of said mortgaged premises; and the holders of said bonds to an amount exceeding one-half thereof requested your orator in writing to proceed, according to the terms and conditions of said deed of trust, to make sale of said mortgaged premises.

But your orator, for reasons hereinafter to be stated, has found it inexpedient to comply with either of said requests.

Second mortgage.

Your orator further states that the said New Albany and Salem Railroad Company, on or about the 14th day of February, A. D. 1852, being engaged in constructing its said railroad extending from New Albany to Michigan City, and said branch from Gosport to Indianapolis, and for that purpose being in need, and having resolved to purchase and transport iron rails and chairs and other necessary iron and machinery to equip the road, had resolved to raise money by loan for such purpose and transportation, and for such other purposes as the wants of the company should require on its said road, to an amount not exceeding two million three hundred and twenty-five thousand dollars, and in order to secure the payment thereof, to execute certain bonds, not exceeding two thousand six hundred and fifty in number, two thousand thereof to be for one thousand dollars each, and six hundred and fifty for five hundred dollars each, bearing interest at the rate of eight per centum per annum, payable semi-annually in the city of New York, to be subject to a clause to be contained therein permitting the holders thereof to exchange the same at par for shares of stock in said company, at any time before maturity.

That to secure the payment of said bonds so to be issued by said company as last above recited, the said company made, executed, and

9 delivered to your orator its certain other deed of trust, which also is in his possession, ready to be produced and exhibited as may be required in this behalf, whereby said company, after reciting that it had resolved to borrow money as above stated and to issue its bonds therefor, granted, bargained, sold, transferred, and conveyed to your orator (the party of the second part therein) and to his successors in the trust thereby created, all the following then present and in the future to be acquired property of said company pertaining to that part of its road which lies between New Albany and Michigan City, and between Gosport and Indianapolis, that is to say:

Their road made and to be made, including the right of way and land occupied thereby, together with the superstructure and tracks thereon, and all rails and other materials used thereon, and procured therefor, inclusive of the iron rails purchased or paid for with the above-described and last-named bonds, or the money obtained therefor, and the machinery purchased with the same, bridges, viaducts, culverts, fences, depot-grounds and buildings thereon, engines, tenders, cars, tools, material, machinery, and all other personal property, right thereto or interest therein, together with the tolls, rents, or income to be had or levied thereupon, and all franchises, rights, and privileges of said company, of, in, to, or concerning the same, but subject to a stipulation therein contained to the effect that nothing therein contained should be construed to prevent said company from selling, hypothecating, or otherwise disposing of any surplus lands of the company not necessary to be retained for their roadway, depot-grounds, stations, nor required for reconstruction or convenient use of their road; nor from collecting monies due the company for stock subscriptions or otherwise: Provided, they should diligently proceed to collect and faithfully apply all such means to the construction and equipment of their said road.

To have and to hold the said premises and every part thereof with the appurtenances unto your orator, his successors in said trust, and assigns, upon the following trusts, that is to say:

CONDITION.

In case the said party of the first part (said company) should fail
10 to pay the principal, or any part thereof, or any of the interest on said bonds, at any time when the same might become due and payable, according to the terms thereof, when demanded, then, after sixty days from such default, upon request of the holder of such bond, the said party of the second part, (your orator,) his successors in said trust, or assigns, should enter into and take possession of all and any part of said premises and property, and as the attorney in fact, or agent of the said company, by himself or his agents or substitutes, duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and additions thereto, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of all said last-named bonds remaining unpaid; or your orator, his successors in said trust, or assigns, at his or their discretion, might, on request in writing of the holders of at least one-half of the bonds then unpaid and unconverted into stock, cause the said premises, or so much thereof as should be necessary to pay and discharge the principal and interest of all of said last-named bonds as should then remain unpaid and unconverted as aforesaid, to be sold at public auction in the city of New Albany in the State of Indiana, or in the city of New York, giving at least forty days'

notice of the time and place and terms of said sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of said cities, and wherever else required by law, and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee-simple for the same, which shall be a bar against said company, their successors and assigns, and all persons claiming under them, of all right, interest, and claim in or to said premises, or any part thereof, and that, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing said property, your orator, said trustee, should apply so much of said proceeds as might be necessary to the payment of said principal and interest due or unpaid on said bonds, and restore the residue thereof to said company.

Your orator further says that said last-named deed of trust contains all and singular the other and further provisions, stipulations, and conditions which above in this bill of complaint are alleged to be contained in the said first-named deed of trust; also, various other provisions and stipulations which your orator is advised are not material
11 to be recited and set forth in this behalf, but said deed being in readiness to be exhibited as aforesaid, he prays that the same be taken and received as part of this his bill of complaint, for all proper purposes.

He further says that said last-named deed was also signed by the president, and countersigned by the secretary, and executed under the corporate seal of said company, and was duly and legally acknowledged and recorded as herein before averred in regard to the said first-named deed, which recording was had and made in each of the counties through and into which said railroad and branch thereof extended, between the points of termini thereof above stated.

He further says that said company, in conformity with its resolution recited as aforesaid in said last-named mortgage or deed of trust, and for the purposes therein also recited, did make and issue two thousand six hundred and fifty bonds, to wit: two thousand thereof for the sum of one thousand dollars each, and the remaining six hundred and fifty thereof for the sum of five hundred dollars each, severally dated the first day of March, A. D. 1852, bearing interest at the rate of eight per centum per annum, payable semi-annually on the first day of each May and November from the said date thereof, until the said principal sum should be paid on the presentation of the interest-warrants thereto annexed, at the office of the Farmers' Loan and Trust Company, in the city of New York, the principal of said bonds being by the terms thereof due and payable at the same place at different dates and times therein severally specified on and after the first day of May, A. D. 1865.

That said company, on the faith and credit of said bonds, and of the said deed of trust so made and delivered as aforesaid to your orator as a security for the payment thereof, borrowed from a great number of persons whose names are unknown to your orator, divers large sums of money, amounting in the aggregate to a large sum of money, to wit: two million three hundred and twenty-five thousand dollars, and delivered said bonds to the said persons from whom said loans were made in consideration thereof, and the same are now outstanding and valid claims against said company in the hands of a large number of holders, many of whose names are unknown to your orator. That said bonds and coupons or interest-warrants are by
12 their terms negotiable, and your orator, as trustee as aforesaid, is bound to protect the rights and interests under said mortgage or deed of trust of whomsoever are or may become holders thereof.

Your orator is advised that said company has paid the interest on all of said last-named bonds which accrued and became due prior to the first day of May, A. D. 1857, but that it has failed to pay any part of the said interest which fell due on that day, and that all the coupons or interest-warrants of said bonds which fell due on that day remain unpaid and outstanding, amounting in the aggregate to the sum of ninety-three thousand dollars, more than sixty days after the maturity of said coupons having transpired.

That after the said period of sixty days after the maturity of said coupons had elapsed, the holders of a large number of said bonds required your orator, as trustee as aforesaid, to enter upon and take possession of said mortgaged premises, and the holders of said bonds, to an amount exceeding one-half thereof, requested your orator in writing to proceed, according to the terms and conditions of said deed of trust, to make sale of said mortgaged premises.

But your orator, as before mentioned in relation to said mortgage first herein referred to, for reasons hereinafter to be stated, has found it inexpedient to comply with either of said requests.

Third mortgage.

Your orator further states that the said New Albany and Salem Railroad Company, on or about the 3d day of November, A. D. 1853, being engaged in constructing their said road from New Albany to Michigan City, and said branch from Gosport to Indianapolis, and being in further need of money to enable it to purchase and transport iron rails and chairs, and other necessary iron and machinery to equip said road, resolved for that purpose and other necessary purposes, to raise money by loan to a further amount not exceeding one million of dollars, the payment thereof to be secured by certain bonds, not exceeding one thousand in number, for one thousand dollars each, bearing an interest of seven per centum per annum, payable semi-annually in the city of New York, to be executed by said company subject to the clause to be contained therein permitting the holders thereof to exchange the same at par for the stock of said company at any time before maturity.

13 That to secure the payment of said last-named bonds said company made, executed, and delivered to your orator its certain other deed of trust, which also he will produce and exhibit as may be required in this behalf, whereby, after reciting that it had resolved to borrow money, as last above stated, and to issue bonds therefor, said company granted, bargained, sold, transferred, and conveyed to your orator, and his successors in said trust, and assigns, all of the same property, rights, and franchises which were before granted and conveyed to him by the said deed of trust secondly above in this bill of complaint mentioned, and by the same terms of description, and subject to the same provisions and stipulations as in said second deed are mentioned, and hereinbefore recited.

To have and to hold the said premises and every part thereof, with the appurtenances, to your orator, his successors in said trust, and assigns, upon the following trusts, that is to say:

In case the said company should fail to pay the principal, or any part thereof, or any of the interest on said bonds at any time when the same might become due and payable according to the terms thereof, when demanded, then, after sixty days from such default, you orator was and is requested, after notice and request as provided in the deed of trust first herein above referred to, to enter into posession, and use, and em-

ploy the said road and premises, or to sell and dispose of the same, and to pay over and apply the proceeds thereof in all particulars as herein above stated and recited in regard to said first-named deed. That said last-named or third mortgage or deed of trust also contains all and singular the other and further provisions and stipulations which are above herein alleged to be contained in said deed first above referred to, and various other provisions and stipulations not deemed to be material to be here recited and set forth, which said third or last-named deed of trust is also in your orator's possession, ready to be produced and exhibited as may be required in this behalf, and he prays that the same be taken and received as a part of this his bill of complaint, for all proper purposes.

That said deed is also signed by the president, and countersigned by the secretary, and executed under the corporate seal of said company, and was duly and legally acknowledged and recorded as averred in regard to the said deed of trust herein secondly above mentioned.

14 That said company, in conformity with its resolution recited as aforesaid, in said third or last-named deed of trust, and for the purposes therein recited, did make and issue one thousand bonds, each for the payment of one thousand dollars, severally dated the day of A. D. , bearing interest at the rate of seven per centum per annum, payable semi-annually on the first day of June and December from the date thereof until the said principal sum should be paid, on presentation of the interest-warrants thereto annexed at the office of the Farmers' Loan and Trust Company, in the city of New York; the principal of said bonds being by the terms thereof due and payable at the same place on the first day of June, A. D. 1873.

That said company, on the faith and credit of said bonds and of said deed of trust thirdly above mentioned, made and delivered to your orator as trustee as aforesaid, to secure the payment thereof, borrowed from a great number of persons whose names are unknown to your orator, divers large sums of money, amounting in the aggregate to a large sum of money, to wit, one million of dollars, and delivered said bonds to said persons in consideration thereof, and the same are now outstanding and valid claims against said company in the hands of a large number of holders, many of whose names are unknown to your orator. That said bonds and coupons or interest-warrants are by their terms negotiable, and your orator, as trustee as aforesaid, is bound to protect the rights and interests under said mortgage or deed of trust, of whomsoever are or may become holders thereof.

Your orator is advised that said company has paid the interest on all of said last-named bonds which accrued and became due prior to the first day of June, A. D. 1857, but that it has failed to pay any part of the interest-warrants which fell due on that day, and that all of the coupons or interest-warrants which fell due on that day remain unpaid and outstanding, amounting in the aggregate to the sum of thirty-five thousand dollars, more than sixty days after the maturity of said coupons having transpired.

Your orator further states that the said company, on or about the first day of February, A. D. 1855, resolved to make a further loan of one million of dollars upon its bonds, to be issued therefor, for the same general purposes for which the bonds previously made by

15 it, as hereinbefore set forth, were made; nine hundred of said bonds for the sum of one thousand dollars each, and one hundred and sixty for the sum of five hundred dollars each, and one hundred thereof for two hundred dollars each, the payment thereof to be

secured by a further or fourth mortgage or deed of trust to your orator.

Fourth mortgage.

That said company accordingly, on the said first day of February, A. D. 1855, executed and delivered to your orator its further or fourth mortgage or deed of trust as and for a security for the payment of said bonds proposed as last aforesaid, to be issued by it, whereby, after reciting that it had resolved to borrow money, and to issue bonds therefor as last above stated, said company granted, bargained, sold, transferred, and conveyed to your orator, and his successors in said trust and assigns, all of the same property, rights, and franchises which were before granted and conveyed to him by the said deeds secondly and thirdly above in this bill of complaint mentioned, and by the same terms of description, and subject to the same provisions, reservations, and stipulations in said second and third deeds mentioned and recited.

To have and to hold the said premises and every part thereof, with the appurtenances to your orator, his successors in said trust, and assigns, upon and for the same trusts, and subject to the same conditions in relation to the said bonds to be secured thereby as aforesaid herein before recited and set forth as being contained in the first, second, and third mortgages or deeds of trust in relation to the bonds secured thereby severally.

That said last-named or fourth mortgage or deed of trust also contains all and singular the said other and further provisions and stipulations, which are herein above alleged to be contained in said deed first above recited and referred to, and various other provisions and stipulations, which are not deemed to be material to be herein recited and set forth, which said last-named or fourth mortgage or deed of trust is also in your orator's possession, ready to be produced and exhibited as may be required in this behalf, and he prays that the same may be taken and received as a part of this his bill of complaint for all proper purposes.

That said deed is also signed by the president, and countersigned
16 by the secretary, and executed under the corporate seal of said company, and was duly and legally acknowledged and recorded as averred in regard to said deed of trust herein secondly above mentioned.

That said company, in conformity with its resolution and purpose recited as aforesaid in said fourth or last-named deed of trust, and for the purposes therein recited, did make and issue nine hundred bonds for one thousand dollars each, and one hundred and sixty bonds for five hundred dollars each, and one hundred bonds for two hundred dollars each, all bearing interest at the rate of seven per centum per annum, payable semi-annually on the first day of August and February from the date thereof, and dated the day of , A. D. 1855, said principal sums and the interest thereon of said bonds being made payable at the said office of the Farmers' Loan and Trust Company in the city of New York, and interest warrants or coupons being annexed to said bonds, the principal being payable as aforesaid on the first day of February, A. D. 1855.

That said company, on the faith and credit of said bonds and of said fourth deed of trust so made and delivered to your orator as a security therefor as aforesaid, borrowed from a great number of persons whose names are unknown to your orator, divers large sums of money, amounting in the aggregate to a large sum, to wit, one million of dollars, and delivered said bonds to said persons in consideration thereof, and the same are now outstanding and valid claims against said company in the

hands of a large number of holders, many of whose names are unknown to your orator. That said bonds and coupons or interest warrants are by the terms thereof negotiable, and your orator, as trustee as aforesaid, is bound to protect the rights and interests under said mortgage or deed of trust of whomsoever are or may become holders thereof.

Your orator is advised that said company has paid the interest on all of said last-named bonds, which accrued and became due prior to the first day of February, A. D. 1857, but that it has failed to pay any part of said interest-warrants which fell due on that day, and that all of said warrants which fell due on that day remain unpaid and outstanding, amounting in the aggregate to the sum of thirty-five thousand dollars; that more than sixty days have elapsed since the said de-

17 fault on the part of said company to pay said instalment of interest, and that your orator has been requested in writing by holders of more than one-half of said bonds to enter into the possession of said mortgaged premises and make sale thereof, according to the terms and conditions of said deed of trust.

Your orator further says that the said company, on the 21st day of December, A. D. 1855, made, executed, and delivered to your orator its certain other deed of indenture so called, and thereby, after reciting that said company was then indebted in a considerable sum for labor and material and machinery for its road which it was desirous to pay, and that portions of its road were not then completed, and that it was not then possessed of a sufficient number of locomotives and cars to do the business of its road, and that it was desirous to procure means to fully complete the same and to supply the locomotives and cars requisite to its business, and to make a loan of $500,000 by issuing eight hundred bonds in the sum of $500 each, and one thousand bonds in the sum of $100 each, bearing interest at the rate of ten per centum per annum, payable at the office of the Farmers' Loan and Trust Company, in the city of New York, on the 1st day of June and December in each year, the principal to be payable at the same place on the 1st of December, 1860, the proceeds of said loan to be applied as aforesaid and to the payment of existing liabilities, said bonds to be of a certain form recited in said indenture; and that said company proposed to mortgage all its locomotives, cars, tools, machinery, cross-ties not laid in the road, and all materials provided for the road, and all other personal property belonging to it, to secure the payment of said bonds and all interest to accrue thereon, and to pledge and appropriate all the net income of the road to the payment of the same, gave, granted, bargained, sold, and conveyed to your orator all its locomotives, passenger-cars, freight-cars, baggage-cars, and hand-cars, of whatever kind; all its engines, lathes, machinery, tools, and materials of whatsoever kind in its machine or other shops, or whatever other place, all its cross-ties not laid in its road, all its wood delivered along the line of its road, and all its other personal property, of whatever kind, provided for or used with its road.

To have and to hold the same to your orator, his successors and assigns forever in trust.

18 That if said company should for sixty days fail to pay the principal, or any part of it, or any of the interest on any of said last-named bonds after the same should become due and payable and after demand of such payment, your orator, his successors or assigns, should have authority, at the request of the holders of at least one-half of said bonds, to take possession of all or any of said granted property in person or by an agent or agents duly authorized by him or them, and to use and employ the same in and about the business of the said road,

making from time to time all needful repairs, alterations, and additions thereto.

It was and is further stipulated and provided in and by said indenture, that your orator, his successors or assigns, should at their discretion or at the request of the holders of at least one-half of said bonds then unpaid, and after twenty days' publication thereof, in three newspapers published in the vicinity of the place of sale, sell all or any part of said granted property at public auction without benefit of appraisement law of the State of Indiana, and apply the proceeds from such sale towards the payment of all of said bonds and the interest thereon then due and unpaid, after first paying the expenses of such sale and of the management of said property so granted as aforesaid; and until said company should be in default by failing to pay all or some of said bonds or the interest thereon in the manner and for the time aforesaid, or until the said company should suffer any of said granted property to be taken by virtue of any writ of attachment or execution issued against it, said company should have the possession and use of all of said property, but on or at any time after such default in paying, or on or at any time after any of said granted property being taken by virtue of any such writ, your orator should be entitled to take the immediate possession of the same, and to hold or dispose of it for the purposes of the trust thereby created, but not at any time to take possession of or sell any more of said property than should be reasonably sufficient to satisfy the bonds and interest then due and unpaid, and the expenses of said trust or such as should be taken under any such writ.

Your orator further states that there are other provisions and stipulations contained in said indenture not herein above recited, and which he is advised are not necessary to be stated and set forth in this behalf for any of the purposes contemplated by the prayer of this bill,
19 but said indenture being in possession of your orator, he now here proposes to produce and exhibit the same as may be required in this behalf, and he prays that the same be taken and received as a part of this his bill of complaint.

He also states that said indenture is signed by the president, and countersigned by the secretary, and executed under the corporate seal of said company. That the same was in due form of law, acknowledged before a notary public, and duly recorded as a mortgage in the recorder's office of Floyd County, in said State of Indiana, within ten days after its delivery.

Your orator is advised that said company has issued and negotiated the bonds contemplated by the recitals contained in said indenture, the same being usually denominated income-bonds, of said company, but when, to whom, or who are the holders thereof at the present time your orator is not advised. But he is informed and believes that the interest which fell due on said bonds on the first day of June, 1857, is still unpaid, and that the said company is in default, by reason of the non-payment thereof, more than sixty days after the maturity thereof; and that as against said company it is competent for your orator to take possession of said mortgaged property, and the same to dispose of in conformity with the terms of said indenture and for the purposes therein prescribed. But your orator is advised the same property of every description, which is described in said indenture and intended thereby to be conveyed in trust to your orator for the purposes therein named, is included in and conveyed by the said four several deeds of trust in this bill of complaint above specified and referred to, and are part and parcel of the said property and franchises of said company first above in

this bill of complaint mentioned and referred to, and that the same is not separable from the other property and frachises mentioned in said four deeds of trust, without causing great waste, loss, and injury thereto, and great detriment to the rights and interests of the holders of the bonds secured by said four deeds of trust. That for these reasons your orator is advised that he cannot, without a breach of his trust and duty under said four deeds of trust, take possession of said property attempted to be conveyed to him by said indenture, or in any manner dispose of the same for the uses in said indenture contemplated. But if your orator is not well advised, as above stated, of the relative rights and priorities as between said indenture and said four deeds of trust, and if,
20 contrary to what he is advised as aforesaid in that behalf, it shall result that said indenture in regard to the property thereby conveyed or any part of it, is not postponed to and inferior in lien to said deeds of trust, then still your orator is of the opinion that said property ought not to be sold separately from the other property and franchises covered by said deeds of trust, and that the true interests of all parties concerned will be best served by selling the whole together, and apportioning the proceeds as may equitable to and among the bondholders, due regard being had to their respective legal priorities.

Your orator is also advised that a similar question touching their respective priorities of lien may arise between the said four deeds of trust in regard to the property specified in said indenture or so-called chattel mortgage, and in regard to other parts of said franchises or corporate property included within the terms of said deeds and by them severally attempted to be conveyed, and particularly in relation to such parts thereof as may not have existed in its present form at the dates of said deeds.

In relation to all these matters your orator is advised that the said franchises or corporate property, so far as the same are by the terms of said deeds respectively attempted to be conveyed, are thereby passed and conveyed as the same exists at the present time, whether the same so existed at the date of said deeds or not, and that said deeds in regard to any and all such portions of said franchises and corporate property attempted to be conveyed thereby, severally, take precedence over each other according to the dates of the bonds secured by each, the eldest having priority.

But your orator in thus stating what he is advised touching the relative priorities of lien between said deeds severally, and said indenture and said deeds, is not to be understood as asserting any preference or priority in behalf of any of the said several classes of bondholders over others; on the contrary, occupying the place of an indifferent stakeholder or trustee in behalf of all of them, and in duty bound to protect all of their legal rights and priorities one with another, and to make the most judicious use and disposition of the property and franchises conveyed to him as aforesaid, in view of the interests of all parties concerned, he now brings the entire subject-matter as herein set forth before this honorable court of equity, to the end that he may be instructed by it in all the further execution of said trust, and to obtain the
21 assistance of this honorable court, as hereinafter prayed, in effecting a sale and distribution of the proceeds of the said property and franchises so as aforesaid holden by him in trust and in execution of said trust. And your orator being such trustee, as aforesaid, and the parties whose interests he represents as bondholders being too numerous to be made parties, being, as he has reason to believe, several thousand of persons, and many hundreds at least, many of whose names and places

of residence are unknown to him, he is advised that it is not necessary that said bondholders, or any of them, should be made parties to this bill; but if it shall for any reason be deemed necessary or advisable that said bondholders, or any of them, be parties, he, in that case, reserves the right to bring them, or so many and such of them as may be deemed necessary, in as co-complainants or defendants.

Your orator, as hereinbefore suggested as a reason why he has not complied with the request of the bondholders to take possession of said road and use and employ the same as contemplated by said deeds of trust in case of default by said company, says that said company is much embarrassed in its affairs, being, as your orator is advised, largely insolvent, and owing a large floating or unsecured debt; that many of that class of its creditors have prosecuted suits and obtained judgment against said company, and are seeking to enforce satisfaction thereof by the seizure of articles of property that are indispensable to be used in operating said road, and that your orator is wholly without any trust-fund or means at his command by and with the aid of which he would be able to prosecute the business of said road, or in any manner to operate the same, and any attempt on his part would necessarily result in a total suspension of the business of said road; or, if he should be able to carry on the same, the product of the business would not admit of his being able therewith, after defraying necessary expenses, to liquidate any considerable part of the interest upon the preferred debt, and by no possibility could he by that means liquidate any portion of the principal of said debts, and in no possible aspect of the subject would it be possible, by that means, to save said company from going into final liquidation.

That by reason of the premises it has become, and is, indispensably necessary to sell and dispose of the said mortgaged premises, to the end that the proceeds of such sale may be applied, as contemplated
22 and stipulated by all of said deeds of trust, in payment of the said interest in arrears upon said bonds, as herein above stated. But your orator states that there are various reasons why he cannot, without the aid of this honorable court in chancery sitting, effect a judicious sale and disposition of said property.

Amongst other things, your orator states that by a legislative enactment of the State of Indiana, which is in force and full validity as the law of the State, it is, among other things, enacted that "no mortgage of real estate, or instrument operating as, or having the legal effect of, a mortgage, thereafter executed shall authorize the mortgagee to sell the mortgaged premises, but every such sale shall be made under a judicial proceeding;" which enactment was in force and valid as the law of said State at the time all of said mortgages or deeds of trust were made and delivered. And your orator is advised that said mortgages, in so far as regards the line and plant of said road, its depot-grounds, building thereon, and water-stations and station-houses, are real estate within the meaning of said enactment, and that by reason thereof your orator, being the grantee of said deeds and representing the rights and interests of said bondholders, is within the meaning of said act a mortgagee, is disabled, except by the aid of judicial proceedings, to effect a sale of said mortgaged premises.

Your orator further states and charges that said company has not only failed and neglected to pay the interest upon its bonds, as herein before charged and set forth, but that it has misapplied the income and earnings of its road over and above the current expenses of running the same, to other uses and purposes inconsistent with the terms and conditions of said deeds of trust, and particularly in paying the same to and

in liquidation of certain floating debts and liabilities in favor of third persons, and he has reason to, and doth well believe, and charges, that if the running of said road and the receipt of the products thereof be allowed to remain in the hands and under the power and control of the corporate officers of said company, the income thereof will continue to be misapplied, as aforesaid, in violation of the just rights of the holders of its bonds secured, as aforesaid, by said deeds of trust.

And further, your orator charges that, without judicial protection through the agency of a receiver, (which is needful to protect the rights of said bondholders against the misapplication of the funds of said
23 company as aforesaid,) it is, and will be, impracticable for the corporate officers of said company to prevent the property or valuable parts thereof covered by said deeds of trust to your orator from being seized and sold under execution by floating-debt creditors. And your orator well believes that from like causes said corporate officers will be unable, during any considerable length of time, to continue the business of said road; and your orator cannot exert the vigilance which is necessary at all times, and at all points along the line of said road, to intercept unlawful seizures of said mortgaged property, and prevent the same from being sold and carried beyond his reach to be recovered back, or, if at all, not without great expense and loss.

Your orator further states that said company was and is duly incorporated and authorized to construct its road and branch, and to borrow money and issue its bonds therefor, and to mortgage and pledge its franchises and corporate property, as hereinbefore stated and set forth, under and by virtue of the following-named special acts of the general assembly of the State of Indiana:

An act entitled "An act to change that part of the New Albany and Crawfordsville m'adamized road which lies between Salem and New Albany to a railroad, to be constructed by a private company."

An act entitled "An act for the benefit of the New Albany and Salem Railroad Company," passed February 11, 1848.

An act entitled "An act in relation to the New Albany and Salem Railroad Company," approved January 12, 1849.

An act entitled "An act to amend the charter of the New Albany and Salem Railroad Company," approved January 12, 1850.

An act entitled "An act for the benefit of the New Albany and Salem Railroad Company," passed January 8, 1851, the objections of the governor to the contrary notwithstanding.

To all of which several acts reference is here made for all particulars of their provisions, the same being published by authority of said State.

That the following-named persons, who are made defendants and named as such in the caption of this bill, to wit, James Brooks and John B. Anderson, severally set up and assert some claim of right to, or interest in, the said franchises and corporate property of said com-
24 pany mortgaged and conveyed in trust to your orator, as aforesaid, the particulars of whose said claims are wholly unknown to your orator; but, whatever they may be, he charges that they are inferior, and subject to the paramount rights and liens of your orator above set forth.

In consideration of all which premises your orator prays process of subpœna against all and each of said defendants first herein above named as such, and that they each severally be compelled to answer so far as they are severally interested in the same all and singular, the allegations and charges hereinbefore contained and set forth, and particularly that said railroad company, under its corporate seal, be compelled to answer, discover, and set forth—

First. Whether it did not make, execute, and deliver to your orator, the said several mortgages or deeds of trust, with the powers, stipulations, and conditions therein contained, as hereinbefore charged and set forth.

Second. Whether it did not make and negotiate its bonds, secured by said deeds of trust, as hereinbefore stated and charged, and whether said bonds are not outstanding and unpaid, and the interest thereon unpaid, as charged.

Third. Whether said company is not greatly embarrassed in its pecuniary affairs, and harrassed and pressed by its floating-debt creditors and others, and the property mortgaged to your orator, as aforesaid, or some part thereof has not been seized by creditors, under execution, and sold, or in danger of being sold, and the same thereby lost to your orator, or put in jeopardy.

Fourth. Whether the product of the business of said company upon its road, over and above the current expenses, has not been, during the last year, wholly or in great part paid and applied in liquidation of debts and liabilities other than the bonds or interest-warrants thereon, for the security whereof said mortgages were made and given to your orator. And said company, in answering this interrogatory, is required to exhibit with its answer a true and accurate statement of the gross earnings of said road during the year preceding the first day of July, 1857, and each month of said year, and to whom and on what accounts the same have been disbursed and paid out, with dates.

Fifth. Whether there are not suits pending against said company, not yet reduced to judgment, in favor of different persons, specifying whom, and before what courts and tribunals, and for what causes of action, and whether there are not unsatisfied judgments existing against it, in favor of different persons, specifying whom, in what courts, and to what amounts respectively.

That said other defendants, on their corporal oaths, may severally true, direct, and perfect answers make—

First. Whether they do not severally set up and assert claims or liens of some sort, specifying what, and all particulars thereof, to the same property and franchises, or some part thereof, and what part in particular, mortgaged or conveyed in trust to your orator, as hereinbefore charged and set forth.

And until the final hearing of this cause may be had, and the said franchises, rights, property, and effects so conveyed as aforesaid to your orator, may be sold and disposed of, and to the end that the same may in the mean time be taken care of and preserved, and the road of said company operated and its business prosecuted to the best advantage for the benefit of all parties interested therein, your orator prays your honorable court to appoint a suitable receiver or receivers, with all such powers as shall be adequate for such purposes.

And, on the further hearing, may it please your honors to make such interlocutory and final orders and decrees as may be necessary to keep and sustain said railroad and its appurtenances in proper repairs and condition for use, and to have the same used, operated, and carried on until it can be sold and disposed of, and in the mean time the income and product thereof accumulated or paid and appropriated as may be lawful, and to ascertain, fix, and determine what amount is due and owing by said company for principal and interest upon its bonds, and each class thereof, made and issued by it as aforesaid, and secured by each of the mortgages aforesaid, and to declare and determine the priorities of lien between them; and to the end that the same may be ap-

plied accordingly, to order, adjudge, and decree that said railroad, including the branch thereof before named, with the franchises, rights, and credits of said company, and all effects and whatsoever else was and is included in said several deeds of trust, and said indenture or chattel-mortgage to your orator aforesaid, be sold and converted into money, and after defraying and paying out of the same all proper costs, charges, and expenses, to distribute and pay the residue to and amongst
26 the holders of said bonds, according to their respective rights and as the same shall be found to be proper in a due and faithful execution of said trusts, to be executed by your orator as aforesaid; and for these purposes to cause to be made and taken all necessary and proper accounts.

And, on the final hearing, may it please your honors to grant to your orator such other and further relief as may be equitable in the premises.

And your orator will ever pray, &c.

F. A. LANE,
HUNTER & DAUGHERTY,
KETCHAM & COFFIN,
Solicitors for Complainants.

And on his further motion a subpœna is issued returnable to September rules, which subpœna is in the following words, to wit:

The President of the United States of America to the marshal of the district of the State of Indiana, greeting:

You are commanded to summon the New Albany and Salem Railroad Company, a body corporate, legally constituted by and in conformity with acts of the general assembly of the State of Indiana, and having its principal office and place of business at the city of New Albany, district of Indiana, James Brooks, and John B. Anderson, if they may be found in your district, to be and appear at the clerk's office of the circuit court of the United States of America for the district of Indiana, before the judges thereof, at rules, at Indianapolis, on the first Monday in September next, then and there to answer the exigency of the bill of complaint of Douw D. Williamson, citizen and resident of the State of New York, filed in the clerk's office of said court.

And have you then and there this writ.

Witness honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the district of Indiana, hereunto affixed at Indianapolis, this first (1st) day of August, in the year of our Lord one thousand eight hundred and fifty-seven.

[SEAL.] HORACE BASSETT, *Clerk.*

The defendants will enter their appearance to the complainants' bill of complaint in the clerk's office of said court on or before
27 the first Monday in September next, or in default thereof the same will be taken pro confesso.

HORACE BASSETT, *Clerk.*

(Endorsed:)

Served writ as within commanded, upon the said railroad company by reading personally to each of the following-named officers of said company, on the 11th day of August, A. D. 1857, to wit: James Brooks the president; George Lyman, the secretary; and John B. Anderson, the superintendent; and also upon James Brooks and John B. Anderson,

the same day, and I also delivered to each a copy hereof at their request, all served in the city of New Albany, Indiana.

JOHN L. ROBINSON,
U. S. Marshal Dist. of Ind.,
By JESSE D. CARMICHAEL,
Deputy.

And afterwards, to wit, at the September rules of said circuit court, is the following:

Comes the complainant, and on his motion the defendants are ruled to answer the bill herein, on the next October rule-day, being the first Monday in October, 1857; it appearing that process has been duly served on said defendants more than twenty days before the first Monday in September, 1857.

And the respondents also come, by R. Crawford, esq., and enter their appearance, and at the October rules of said circuit court the respondents come, and file their demurrer to the complainant's bill, in these words, to wit:

THE NEW ALBANY AND SALEM RAILROAD COMpany, JAMES BROOKS and JOHN B. ANDERSON, *ads.* DOUW D. WILLIAMSON, TRUSTEE, &C. } Chancery.

The said New Albany and Salem Railroad Company, one of said respondents, by her solicitors, now come and demur to said bill of complainant, and say that the same is wholly insufficient, both as to the discovery prayed and relief asked, to require from said respondents any answer whatever; in this, said bill does not contain the proper parties; and in this, said bill sets up a usurious contract that cannot be enforced in a court of equity; and in this, no decree whatever can be ren-
28 dered on said bill; wherefore said respondents demur to said bill, and pray to be dismissed with her costs.

CRAWFORD & SMITH,
Solicitors for Respondents.

I, Oliver H. Smith, one of the above solicitors for the New Albany and Salem Railroad Company, do hereby certify that in my opinion the above demurrer is well founded in point of law.

O. H. SMITH,
Solicitor for Defendant.

STATE OF INDIANA,
Floyd County, ss;

Personally came before me, the undersigned, a notary public within and for said State and county, James Brooks, president of the New Albany and Salem Railroad Company, and upon his oath says that the above demurrer is not interposed for delay.

JAMES BROOKS,
President.

Subscribed and sworn to before me, at my office in the city of New Albany, in said county, this 28th day of September, A. D. 1857.

Witness my hand and notarial seal.

[SEAL.]

W. W. TRUIT,
Notary Public.

And at the same time the respondents file the following demurrer to complainant's bill:

THE NEW ALBANY AND SALEM RAILROAD CO., James Brooks, *ads.* DOUW D. WILLIAMSON, TRUSTEE, &C. } In chancery.

The said James Brooks, one of said respondents, separate and apart from said New Albany and Salem Railroad Company, for himself, by his solicitors, now comes and demurs to said bill of complaint, and says that the same is wholly insufficient in law, both as to the discovery prayed, and relief asked, to require from said respondents any answer whatever; in this, said bill does not contain the proper parties, nor has this court any jurisdiction over the persons of these respondents, nor do they submit themselves in any way to the jurisdiction of this court; and in this, the pretended contracts set up are usurious and void;
29 and in this, there is no sufficient equity in the bill to justify any decree whatever against these repondents; wherefore they demur to said bill, and pray to be dismissed with their costs.

CRAWFORD & SMITH,
Solicitors for Respondents.

I, Oliver H. Smith, one of the above solicitors of James Brooks and John B. Anderson, do hereby certify that in my opinion the above demurrer is well founded in point of law.

O. H. SMITH,
Solicitor for Defendants.

STATE OF INDIANA,
Floyd County, ss:

Personally came before me, the undersigned, a notary public, within and for said State and county, James Brooks, and upon his oath says that the above demurrer is not interposed for delay.

JAMES BROOKS.

Subscribed and sworn to before me, at my office in the city of New Albany, in said county, this day of October, A. D. 1857.
Witness my hand and notarial seal.
[SEAL.]

W. W. TRUIT,
Notary Public.

And afterwards, to wit, at Columbus, before the honorable John McLean, one of the associate justices of the Supreme Court of the United States, and judge of the 7th judicial circuit, second day of November, eighteen hundred and fifty-seven, now come the parties, by their counsel, and the case fully argued and submitted to the court, and the court being fully advised as to the matter in controversy, makes the following order and decree:

That the motion of the complainant for a receiver be denied. It is further ordered that the said company, from and after the first day of January, A. D. 1858, set aside the one-half of the net earnings of the road for the payment of the interest of the bonded debt of said company. The other half of the net earnings to be applied to the payment of the floating debt of the said company. A report of the gross

and net earnings to be made to the court monthly, by the secretary of said company; (that is,) for the month of January, the report shall be made in February, and so on each succeeding month, keeping one month behind, in order to enable the said company to receive the re-
30 turns of the receipts and expenditures for the preceding month. The half of the net earnings for the benefit of the bonded debt to be paid in to court, and that the said company report to the court how the net earnings have been expended from the 1st of November to the 1st of January, aforesaid. But nothing in this order is to be understood as preventing the plaintiff from renewing his motion for a receiver, at any time prior or subsequent to said first of January, upon any new statement of facts which he may be able to present.

At the same time and place the following affidavits were read before the judge aforesaid:

George Lyman, a citizen of New Albany, and State of Indiana, deposes and says that he is secretary and acting treasurer of said New Albany and Salem Railroad Company; that since some time in the year 1848 he has had charge of the accounts of said company, and that its receipts and disbursements have been duly entered upon its books; that said books have at all times been subject to the examination of said complainant; that statements of the accounts of said company have frequently been furnished him, and that no concealment of the financial condition of said company has ever been attempted within the knowledge of deponent.

Deponent further says that the floating debt of said company might have been paid before this time, if the funds and earnings of said company had not been used in the completion of the construction of said company's road; that heavy expenditures have been made within the last year in the removal of flat-bar rail from the track of said road, and in relaying the same with T-rail.

Deponent further says that said expenditures for relaying said track were made at the special request of said complainant, and with a view to render the road more efficient, as well as to save the company from the frequent losses attending its efforts to operate the road in its imperfect and unfinished condition.

Deponent further says that the floating debt of said company is being diminished as rapidly as can be done consistently, and without suffering the road and equipments to deteriorate.

Deponent further says that a portion of said floating debt was created for the loan of money to carry on the improvement of said track, and the payment of the operatives, for which it may be necessary
31 to procure the endorsements of the friends of the company, and that the money thus obtained upon the endorsement of other parties has been faithfully applied, and that none of the funds of said company have been squandered or misapplied.

Deponent further says that the "strike" of the operatives of said road in July last was caused as well from the fact that the company was indebted to them, as the report current amongst them, the road was about to pass into the hands of a trustee or receiver; that every effort has been, and is now being, made to decrease the amount of the said company's indebtedness to the operatives, that the same is being decreased monthly, and that the operatives of said road are now steadily at work.

GEO. LYMAN.

SOUTHERN DISTRICT OF OHIO:

Sworn and subscribed in open , Oct. 20th, 1857.

WM. MINER,
Clerk U. S. Cir. Court.

Circuit court of the United States for the district of Indiana.

DOUW D. WILLIAMSON, TRUSTEE,
against
THE NEW ALBANY AND SALEM R. R. CO.

William G. Cooper, of the city of New Albany, Indiana, being duly sworn, deposes and says that in any conversation had at any time between this deponent, one of the officers of the defendant's company, with Frederick A. Lane, one of the solicitors in the above cause, in relation to the determination of the said company to hold on to the possession of the said company's road until the floating debt was paid, was always on connection with and reference to the appointment of a receiver, by way of a response to statements made by said Lane of an intention to bring a suit and move for a receiver.

W'M G. COOPER.

Sworn to and subscribed before me, Oct. 21, 1857.

W'M MINER,
Clerk U. S. Cir. Court, S. D. of Ohio.

DOUW D. WILLIAMSON, TRUSTEE,
against
THE NEW ALBANY AND SALEM RAILROAD CO.,
James Brooks, and John B. Anderson.

John B. Anderson, a resident of New Albany, Indiana, being duly sworn, deposes and says that he was appointed superintendent of
32 the New Albany and Salem Railroad, and entered upon the discharge of his duties on the 8th day of October, 1855; that he has ever since, and does now, hold said appointment.

Deponent says further that upon taking charge of said New Albany and Salem Railroad, he found the work in many respects incomplete; that much work was required in clearing out and widening cuts, and in enlarging and filling out embankments, and in ballasting portions of the track; that the rolling machinery and stock of the road required much repairs in order to render it equal to the work of the regular trains, and to do the additional work in construction that was then found necessary; that there was a portion of the track of said company constructed of flat bar iron; that in order to render the property of said railroad company profitable, and to reduce the expense of operating the road, deponent deemed it important to expend the earnings of the road in thus completing the construction, in repairing the machinery, in replacing the flat bar with T-rails, and in ballasting the track.

Deponent says further that much of this work has already been done; that the machinery of said railroad company has been extensively repaired and much improved, and is now in good condition; that all of the flat bar-iron has been removed and T-rails substituted; that many parts of the track have been ballasted; that the track of said railroad has been constantly improved during the past two years, and that said

railroad as regards track, rolling-stock, and machinery is in better condition at the present time than at any former period within the knowledge of deponent.

Deponent says further that in consequence of the very general failure of crops on and near the line of said railroad, the gross earnings have been much less than they would have been during the last year had such failure not existed; that in the opinion of deponent the decrease of earnings from said cause is not less than two hundred thousand dollars.

Deponent says further that he verily believes that the New Albany and Salem Railroad is now and in its present condition ample security for its indebtedness.

Deponent says further that as part of the floating indebtedness of said railroad company is due in small sums to a very large number of parties along the line of said road, for labor and services rendered, for boarding men and furnishing fuel and other supplies, who would consider their rights sacrified by the appointment of a
33 receiver; that it would greatly endanger the property of said railroad company to pass said property into the hands of a receiver, unless the said floating indebtedness were first paid; that it would endanger the safety of the track, rolling-stock, and other perishable property of said railroad company, as well as the lives of passengers; that it would lead to a total suspension of business on said railroad, and produce a great loss not only to said company, but to her creditors, and render said property insufficient security for the bonded and other indebtedness of said railroad company; that it is clearly the opinion of deponent that it would be quite as impracticable for a receiver to operate said railroad as it would be for complainant to operate it.

J. B. ANDERSON.

Sworn to and subscribed before me, October 21st, 1857.

W'M MINER,
Clerk U. S. Cir. Court, S. D. of Ohio.

Circuit court of the United States for the district of Indiana.

DOUW D. WILLIAMSON, TRUSTEE, &C.,
against
THE NEW ALBANY AND SALEM R. R. CO. AND OTHERS.

STATE OF OHIO,
Hamilton County, City of Cincinnati:

Erasmus Gest, being duly sworn, says that he is the president and receiver of the Cincinnati, Wilmington and Zanesville Railroad; that he is likewise the superintendent of said road, and has the entire management thereof; that he is a practical engineer, and has been connected with railroads, directly and indirectly, for many years, and understands the working of the same; that at the solicitation of one of the counsel for complainants in this action, he visited the city of New Albany, Indiana, and waited upon the president of defendants' company, and stated that the object of his visit was to examine the road and its affairs; that the inspection of the books and accounts of the office was not allowed him, though opportunity was offered for an examination of the road itself. That the superintendent accompanied him over the entire road, which appears to be supplied with a sufficiency of machine-shops and tools, at the two ends of the road, for the necessary repairs;

that many of the principal stations are provided with large and commodious brick depot-buildings, used for both freight and pas-
34 senger service; that the locomotives, cars, track, road-bed, and other machinery and structures are not maintained, nor are they in that condition or repair that they should be, and the property is thereby more rapidly deteriorating, and the expense of maintaining and operating greater than if the road was placed and maintained in order; that a continuance of the property in its present average condition will only lead to a much larger expenditure, for extraordinary work and material, and an increased cost of operating, than if at once placed in proper order.

That large renewals of ties, and heavy repairs, and renewals of iron, will be constantly required, and some twelve or fourteen miles or more of the road is so laid on longitudinal sills as to be maintained only with large extra cost. That the road needs a large amount of work done in the way of ditching and ballast. That this deponent has been informed, and from his own judgment verily believes, that the revenues of the road have been sufficient, if properly and promptly applied, to meet not only these extraordinary expenses, but to pay the expenses of operating, and interest on a considerable part of the bonded debt.

E. GEST.

Sworn before me this 21st day of October, 1857.

EDWARD R. NEWHALL,
United States Commissioner.

The following deposition was also read on the trial before the judge aforesaid:

Circuit court of the United States for the district of Indiana.

DOUW D. WILLIAMSON, TRUSTEE,
against
THE NEW ALBANY AND SALEM RAILROAD CO.,
James Brooks, and John B. Anderson.

James Brooks, of the city of New Albany, and State of Indiana, deposeth and says that he is the president of the New Albany and Salem Railroad Company, and has acted as such since the first organization, in July, 1847. That on or about the time named in the complainant's bill, the New Albany and Salem Railroad Company did execute the mortgages, and issue the bonds named in said bill of complaint, but that the proceeds of the sale of said bonds, and the stock subscriptions and other means of said company were insufficient to finish and equip said road for business, and it became necessary to have other means
35 to finish the road and put it in such condition as would enable the managers to earn the necessary amount of money to pay the principal and interest of its debt.

At that time railroad securities had got in such bad repute that it was impossible to borrow on the sale of bonds, except at such a sacrifice as would have rendered it impossible for the company ever to repay it. Under such circumstances there were but two courses which the company could pursue; one was to give up the road in an unfinished condition to the bondholders, and suffer them to incur a very heavy loss, or perhaps an almost total sacrifice of their investment; and the other was to state the deficiency frankly to such of the bondholders as could

be seen, and go on and use the net earnings of the road, with such other means as the company could command, and finish and equip the road, and put it in a condition to earn money to pay the principal and interest of its debt. The latter course was adopted as being the best for all parties concerned.

Your deponent further says that the said complainant, and a large number of the bondholders whom he met from time to time in his visits to New York, and with whom he was in correspondence, were fully advised of these difficulties, and that they uniformly advised him to go on by all means and finish the road, and get the flat-bar track relaid, and get it in good order for earning money to pay its debts and the interest on its bonds.

And your deponent believes, and the said complainant and bondholders expressed to him the belief, that, but for an unlooked-for loss of business, occasioned by the (unlooked) unprecedented failure of the crops of 1854–'56, that the road could not only have been finished and in good order, but the floating debt paid off and the interest paid on the bonds.

Your deponent utterly denies that there ever has been the misapplication of a dollar of the funds of the road, but believes that all the funds of the company, from the first day of its organization to the present time, have been faithfully applied to its construction and the necessary repairs, and the payment of the just debts of the company, and the interest thereon.

The company have been more or less in debt for several years past, in consequence of the condition of things stated above, and there are now some judgments against the road, growing out of unadjusted
36 claims for damages for right of way, which claims would gradually have been (paid) settled, but that the parties refused to abide the award of the commissioners appointed to adjust them; but that with the exception of this class of claims, there are few, if any judgments against the company. And your deponent believes that there never has in all been property of the company to the amount of two hundred dollars sold under execution, the creditors of the company being generally satisfied that it is the intention of its officers to pay all just claims against it.

The greatest difficulty which the officers of the company have experienced in satisfying the creditors of the safety of their claims, has grown out of the fact that this suit had been commenced for the purpose of cutting off just claims against the company, and sacrificing all its creditors except the holders of its mortgage-bonds, as this honorable court will see by reference to a printed report to the bondholders, appended to said F. A. Lane's affidavit.

Your deponent further says that the net earnings of the road for the present year have been expended in paying for labor and materials used in constructing and operating said road, and repayment of money procured for similar purposes.

Your deponent further says, and believes, that the road and its appurtenances are more than sufficient to pay all of its debts, and that the security in the bonds has been increased nearly fifty per cent. since the first three millions of its bonds were negotiated.

At the time these bonds were offered for sale, the stock-subscriptions of the road amounted to $1,700,000, which, with the money received in payment for the bonds, constituted the security for the payment of the money borrowed. Since that time the stock has been increased to up-

wards of $2,500,000, thereby adding $800,000 to the security originally offered to the loan.

Your deponent further says that he knows that all of the funds of the company procured from stock-subscriptions, or from the sale of bonds, or otherwise, have been faithfully and economically applied to the construction, equipment, and finishing said road; and he believes, and the opinion has been expressed to him by the plaintiff, and by many of the bondholders who have examined the road, as well as by others who are competent to judge of such matters, that a larger amount of work has been done on this road, for the amount of money it cost, than any similar work in this country; and he further believes it has been done for less money than it could be done for now, and that it is worth all it cost.

37 That part of this route, say from New Albany to Crawfordsville, 167 miles, had been selected by the State for a railroad at the time the State of Indiana adopted her system of internal improvements in 1836, and was abandoned because the State engineer, as I am informed and believe, assisted by the U. S. engineers who had been called in to consult on the subject, reported that it would cost "sixteen millions of dollars" to make that part of the line which this company has made and equipped for less than five millions, and she has made and equipped the entire line between New Albany and Michigan City, 288 miles, for about seven and a half millions of dollars.

Your deponent believes that the appointment of a receiver, or any other measure which would stop the payment of this floating debt, would not only be great injustice to the 1,000 or 1,500 laboring men on the line of the road from whom the company has procured labor and materials necessary for conducting the business of the road, and to another class of persons who have lent their credit to enable the company to procure funds to pay for labor and materials to furnish and equip the road, with the assurance to all that this labor and these materials and money were necessary to finish the road and make it productive, and that they would under any circumstances see the parties paid.

The managers of the road felt safe in making these promises, and giving these assurances of payment, from the fact that the work was done not only with the knowledge, but at the repeated and urgent request of the complainant in this case, as well as a large number of bondholders with whom deponent from time to time came in contact.

Your deponent believes that the appointment of a receiver would endanger the safety of the property of the company and the lives of passengers on the road, and in a conversation with the complainant on that subject, in July last, he expressed the same opinion.

Your deponent is informed and believes that there are certain parties who hold a portion of each description of the bonds in said bill of complaint, but there are a large number of persons who hold bonds under the 3d and 4th mortgage who hold few if any of the 1st and 2d mortgage bonds.

Your deponent says that a notice of the proceedings in this court was handed him at 10 o'clock on Saturday morning, the 17th

38 inst., which notice required certain information to be furnished of the condition of the road, and its assets and liabilities, &c., by Monday morning at 10 o'clock, the 19th inst. In order to be present at the time specified in the notice, I did not have time to get all the information asked. I submit herewith a statement of the assets and lia-

bilities of the road to July 1st, 1857, which contains a large portion of the information called for.

The questions relating to the receipts and expenditures of the road from July 1st to October 1st cannot now be had, as the settlement with the hands for labor has for a long time past not been made until about three months after the labor is performed; the books will not show fully the amount of the payments to the men up to the 1st of October until some time in December next. Had sufficient time been given in the notice, a more particular statement could have been made.

The gross earnings of the road for the year ending June 30th, 1857, were $686,810.72, and the expenditures for the same time were $418,719.97, leaving the net earnings $268,090.95. These earnings fell short at least $200,000 of what they would have been with an average crop along the line of the road, but the almost total failure of all the great staples of the country last year left very little work for the road, and cut down its earnings, while the expenses were about as much as they would have been had the business come up to estimates.

Your deponent not having time to examine the books sufficiently to procure any more information asked by the counsel for the complainant, has given it so far as he could under the circumstances.

Your deponent can only state from recollection that he thinks the floating debt of the company which would be shown from the (company's) books, on the 1st of October, exclusive of the deferred interest, would be about $235,000, which would show a reduction at that time of $45,000 since the 1st of July; to each of the statements it would be necessary to add about $40,000 due to operatives, or unadjusted pay-rolls.

Your deponent further says that, to the best of his recollection, no demand has ever been made on him or of the company for the payment of the interest due and unpaid on the bonds.

Nor has any demand been made on him or the company to give up the road to the trustee, according to mode prescribed in the mortgages.

39 Your deponent further says that that part of the affidavit of said Lane, in which he states that he proposed to the president of the railroad company (who was this deponent) that the debt due to the laborers should be paid, and then that the road and other property of the company should pass to said trustee, according to the terms of the mortgage, is not correct, and no such proposition was ever made to this deponent; but said Lane did propose to this deponent that this deponent should agree that a receiver should be appointed in a suit which said Lane was then intending to bring in favor of this plaintiff and against said company, and that then the laborers should be paid out of the first earnings of the road after the appointment of a receiver, and to that proposition this dependent refused to agree.

Deponent further says that, some time since the commencement of this suit, Mr. Erasmus Gest called at the office of the deponent in New Albany, and informed him that he had come to New Albany for the purpose of going over the New Albany and Salem Railroad and looking at it, at the request of some of the bondholders, to see if the could not be adjusted, &c.

Deponent told said Gest that he should be happy to give him every facility in his power for examining the road, and that he had frequently requested such an examination on the part of the bondholders, and that as the passenger-trains passed over part of the road at night, he would consult the superintendent, and if practicable send him over the

road in a special train, so that he might have an opportunity of examining every part of the line by day-light.

Deponent further says that, to the best of his knowledge, recollection, and belief, said Gest did not at any time express any wish to deponent to make an examination of the books and accounts of the company, and this deponent was present with said Gest all the time that he was at the office of deponent, and that at that time he did not express any such wish to any other officer of the company.

JAMES BROOKS.

Sworn to and subscribed before me, Oct. 21st, 1857.

WM MINER,
Clerk U. S. Cir. Court S. D. of Ohio.

The following is the exhibit referred to in the deposition of James Brooks.

40 *Statement of the assets and liabilities of the New Albany and Salem Railroad Company, July 1st, 1857.*

ASSETS.

Construction		$6,226,681 25
Right of way, buildings, water-stations, machinery, etc		323,495 56
Locomotives		265,989 14
Cars—freight, passenger, and baggage		342,453 83
Real estate		83,582 22
		$7,242,202 00

PERMANENT ASSETS.

Cash	$1,757 12	
Materials and unfinished work in shop	74,697 95	
Fuel on hand	39,610 53	
Balances due on stock-subscriptions	88,824 74	
Lands not necessary for use of road	16,656 35	
Due from operating department	64,244 29	
Due from agents and others	25,990 13	
Montgomery County bonds	100,000 00	
Capital stock of this company rec'd in payment for bonds	254,100 00	
Seven per c't 3d mortg. bonds unsold	452,809 00	
		1,118,662 11
Balance on debit of profit and loss		32,944 71
		$8,393,827 32

LIABILITIES.

Capital stock	2,522,107 96
Ten per cent. bonds due, $100,000 per annum, from April 1st, 1859, to April 1st, 1863	500,000 00
Eight per cent. bonds, $125,000 due May 1st, 1864, and $200,000 per annum thereafter	2,325,000 00
Seven per cent. bonds issued by Crawfordsville and Wabash R. R. Co. January 1st, 1863	175,000 00
Seven per cent. 2d mortgage bonds, due June 1, 1873.	1,000,000 00
Seven per cent. 3d mort. bonds, due Feb. 1st, 1885	1,000,000 00

Ten per cent. income-bonds	402,456 74
Six per cent. bonds issued to contractors	12,840 00
Bills payable and checks issued to operatives	277,528 83
Balances due on open account	3,407 77
Deferred interest	175,486 52
	$8,393,827 82

41 At the same time and place, the following affidavits were read before the judge aforesaid:

CITY AND COUNTY OF NEW YORK:

Frederick A. Lane, of said city, being duly sworn, says that he is one of the solicitors for the complainant in this action, which has been brought for the foreclosure of certain mortgages executed by the said New Albany and Salem Railroad Company to the said complainant, and which said mortgages and the record thereof and the statements therein contained are referred to as part of this affidavit.

And the deponent further says that the said mortgages were made to secure the payment of various issues of bonds and the interest to accrue thereon semi annually; that this deponent has read the bill of complaint herein and knows the contents thereof, and that the same is true to this deponent's own knowledge, and this deponent refers to the same and the statements therein contained as part of this affidavit.

And this deponent further says that, in the early part of the present year, 1857, a report was prepared by the president of the said New Albany and Salem Railroad (Company) to the bondholders under the said several mortgages, a copy of which is hereto annexed, and to which this deponent refers as part of this affidavit; that, subsequently, this deponent visited New Albany, the place where the principal office of the said company is established, and found the financial condition of the company exceedingly poor, and that the laborers on the road were unpaid their wages for a long period of time, and that there had been a "strike" on account of such non-payment, thereby endangering the property of the company, which had been mortgaged to secure payment of the same, as above mentioned; that this deponent proposed to the president of the said company that the debt due the laborers as aforesaid should be paid out of the first net earnings of the road, and that the road and other property of said company should pass to the trustee of the said bondholders, according to the terms and conditions of said mortgages, on default in the payment of the interest as aforesaid, and that the said president declined to accede to the said proposition unless the entire floating debt of $350,000, and as mentioned on page 4 of the said report hereto annexed, should be liquidated and paid, to which proposition the deponent declined to accede.

42 And this deponent further states that he requested the said president to prepare (and) a full and perfect statement of the affairs, property, and condition of the said road and company, and arrange the same under the various headings proper to each department thereof, and that the same was prepared but not delivered to this deponent or to said trustee, and that it has been stated expressly to this deponent and others, by the agents of defendants' company and others, that the intention of the said company was to retain possession of said road until the floating indebtedness aforesaid was paid off, or at any rate until the 1st of May, 1858, by which time they hoped to have liquidated the same in full out of the earnings of the road, thereby defeating

the object of the said mortgages, which intended to pass and did pass all the property and income of the said company.

And this deponent further says that there is great danger that the said property and income will be wasted and greatly impaired by reason of the desire, on the part of the said president and directors, to pay off as rapidly as possible the said floating indebtedness.

And this deponent further says that the annexed report is one furnished by the president of said company, and was furnished and prepared by him, said president.

FRED'K A. LANE.

Sworn before me this 23d day of September, 1857.

GEO. W. MORELL,
U. S. Court, Southern Dist. New York.

President Brooks' report to bondholders, referred to in the foregoing affidavit:

To the bondholders of the New Albany and Salem Railroad Company:

GENTLEMEN: When in the early part of the year 1856, I visited New York for the purpose of getting your consent to the funding of the interest on the bonds of the New Albany and Salem Railroad Company, for a time I confidently calculated that we would be able to resume payment on the first-mortgage bonds in April and May of this year. I regret being under the necessity of informing you that in that we are disappointed, and that we shall be obliged to ask further indulgence on the part of the bondholders. After giving you the causes of the failure, and stating to you frankly the condition of the company, you will be enabled to judge which of the propositions, or whether either of them which I submit below, it will be most to your interest to accept.

43

You will remember that we estimated for the year 1856 $900,000, which would have left $450,000 of net earnings to be applied to the improvement of the road and to the liquidation of the floating debt; the business has fallen short of that about $156,000, while the expenses have been nearly as much as they would have been had the earnings come up to our estimate. This estimate was made upon data which we considered perfectly reliable.

The falling off was occasioned in a great measure by the failure of nearly all of the great staple productions along the line of the road; and the same drought which caused the failure of the crops rendered the Ohio River unnavigable during all the latter part of the year, and it finally froze up before navigation opened. For eight or nine months the navigation was suspended.

These causes not only prevented a large amount of freight passing over the road, but had a like effect upon the passengers, and our receipts were cut down accordingly. Having failed to meet our engagements with the bondholders, it remains for us now to give them a fair statement of the condition of the company, and allow them to pursue the course which they think most conducive to their own interest.

The company owes a floating debt of near $350,000; about one-third of that amount was borrowed of banks in the neighborhood, on the individual endorsements of the friends of the road. This money was obtained to enable the company to procure materials and labor for the relaying and finishing the track. The remainder is principally due to

operatives on the road for labor and supplies of fuel, &c. This debt is of such a nature that it will be very difficult for any company to work the road without paying it. A portion of it could be carried over if the company continues in possession of the road; but it would necessarily have to be paid if they do not. I should consider it unsafe to attempt to run the cars over the road, if so many men as the company owes money to have to be thrown out of their claims.

As a matter of policy, as well as principle, I should rather pay this debt, if I owned the road, than to attempt to work it without paying it.

44 There is, I am satisfied, a wrong impression prevailing here with regard to the rights of the different bondholders under the various mortgages. Under the laws of Indiana no individual or company can mortgage personal property which they do not at the time own.

The first-mortgage bond, $3,000,000, covers the road and most of the permanent improvements on it, and but very little of the rolling-stock.

The second and third mortgage bonds and income-bonds cover the *the* principal part of the rolling-stock, and the material on hand for building cars and engines, fuel, &c., together with the machinery in the shops, except such a part as is attached to the realty.

If the first mortgagees should foreclose their mortgage on the road, they have no machinery or anything to work it with, unless they purchase the interest of the mortgages which come after them. Under these circumstances three courses are left to the bondholders:

The first is to agree that the road should remain as it is and work itself out of its difficulties, which it would do, perhaps, so as to be able to resume on the ten per cent. bonds on the first of October next, and on the eight per cent. by May, 1858.

Or, if the bondholders feel indisposed to leave the road, under the circumstances, in the hands of the stockholders, the board will agree to deliver it up to a trustee or trustees, to be worked, say, from five to seven years; the first earnings to be paid over to the first-mortgage bonds, the other bonds coming in in the order of their claims, provided the money is advanced to pay the debt named above. And it shall be understood that when all the arrearages shall be paid up, that the road shall again be delivered up to the stockholders.

The last-named arrangement would give to the holders of the first mortgage all the advantage of their prior lien, and also the use of the rolling-stock, &c., which belong to the other bondholders. The second and third mortgage and income bonds would have the advantage of making their claims good by yielding up, temporarily, the claim they now have on the machinery, &c.

A third proposition is to allow, by an amicable suit, the first mortgage to be foreclosed, making the second and third mortgage and income-bonds into new stock upon such terms as may be agreed upon, provided the first mortgage will subscribe enough additional stock to pay

45 off the debt named. Either of these propositions, I think, would be agreed upon by the directors of the company. They have no disposition to take any course to prevent the creditors from realizing their claims, and they feel confident that the property of the road is more than sufficient to do that.

But they would not consent to have the first-mortgage bondholders sacrifice the road, to the exclusion of the mortgages that come after them, and the other creditors of the road. The holders of the claims

for labor, and the endorsers on the paper, are not able to convert their claims into new stock; and the debt is of such a nature that the directors do not feel that they would be doing right to allow them to be sacrificed.

You will, of course, make up your own minds which of the above propositions it will be most for your interest to accept.

The first can be got along with less difficulty than either of the others, provided the bondholders are willing to intrust the road to its present management, as it will require no outlay of money on their part.

Of the second and third propositions, there are some decided advantages in the second over the third; as the company would go on under its present corporation, it would have all the advantages of its present charter.

The third proposition would require a new organization, and would involve a question for legal gentlemen to decide, whether it could proceed under its present charter or would not have to be organized under the general railroad law of the State of Indiana.

The only advantage the third proposition could have over the second would be that of giving the new stockholders the chance of an increased value of their stock. Whether that would not be more than counterbalanced by the loss of the advantages of the present charter, and the dissatisfaction of three or four thousand disappointed stockholders, who are business men along the line of the road, is a question for consideration.

It is the desire of the directors of the road that this difficulty should be adjusted without litigation; they only claim that all the creditors of the road shall be provided for, and I think there is ample to do this, and they will be willing to enter into any reasonable agreement with the bondholders which will carry out that principle.

Below I annex a table showing the earnings of the road from July 1st to December 31st, 1856, by which it will be seen that the
46 gross earnings for the 6 months were $413,566.35, and the expenses were $223,034.65, leaving the net earnings $190,531.70, which was expended in relaying the track and otherwise improving the road, and the payment of debts.

The amount of work to be done this year is small compared with what has been done during the last. The flat bar is now all relaid, the last of it having been done during the present month. Originally there was 45 miles of this track. Besides being of great injury to the road in reputation, and causing many very heavy expenses for repairs on cars and machinery, it has cost us an average of not less than $10,000 per mile to relay it. This one item, which was not included in the original estimates, has cost, besides the incidental disadvantages named, about $450,000.

Could we have controlled the means, it would have been good policy, as well as economy, to have relaid it all before the road was opened through for business; situated as we were, that was impossible, and we have been obliged to suffer the losses and inconveniences of it, until now we are happily relieved from it.

Below will be found a statement of the assets and liabilities of the road to January 1st, 1857, with a statement of the increase and decrease of the various items for the six months preceding.

The failure of the crops last year will affect our freight business for the first eight months of this; consequently we do not expect to be able to show much increase in the entire business for the first half of this year over last. The passenger business is increasing, and now that the

flat bar is out of the way, will increase more rapidly. The opening of the Ohio and Mississippi Railroad will give us a large increase of travel on the south end of the road; and if the business amounts to as much as has been estimated by most persons, will much more than compensate for the loss of the freight occasioned by the short crops, for the remainder of the year.

NOTE.—I had visited New York about the first of the present month, expecting to be able to see and explain personally to the bondholders or their agents many details connected with the road, which it is impracticable in a statement similar to the above, and to be able to answer the various questions which the different parties might wish to propound; but being taken violently ill a day or two after my arrival, and having been for the last three weeks under the hands of a physician, I am unable to do it.

My physician advises me to return home as fast as my strength
47 will permit, and thinks I should run a great risk to attempt under present circumstances to remain in New York until I recover sufficient strength to attend to business.

After I have to some extent regained my strength, which I hope will not be long, and it should be thought best, I will come on again and give any explanations which may be required.

JAMES BROOKS, *President.*

NEW YORK, *April 27th*, 1857.

Receipts of the New Albany and Salem Railroad Company from July to January, 1857.

	Freight.	Passage.	Mail & exp
July	$19,977 26	29,260 70	3,587 50
August	24,993 63	34,854 61	3,587 50
September	24,931 76	46,132 30	3,587 50
October	26,145 15	51,874 16	3,587 50
November	30,247 37	33,662 80	3,587 50
December	36,494 64	28,216 97	3,587 50
Total freight	$162,789 81		
Total passage		$224,001 54	
Total mail and express			$21,525 00

Totals, (from above,)	$52,825 46
	63,435 74
	74,651 56
	81,606 81
	67,497 67
	68,299 11
Add three months' express service in advance, as per contract, Dec. 31, 1856	5,250 00
Total	$413,566 35
Less expenses on account track-repairs, machinery, fuel, oil, officers' salaries, station and train service, &c	233,034 65
Balance to credit of profit and loss	$190,531 70

48 *Statement of the assets and liabilities of the New Albany and Salem Railroad Company, January 1st, 1857.*

ASSETS.

Construction of railroad and right of way		$6,191,660 93
Depots, water-stations, shops, and machinery		315,586 65
Cars, freight, passenger, and baggage		342,453 83
Locomotives		265,989 14
Real estate		82,753 76
Permanent assets		$7,198,444 31
Cash	$7,205 40	
Due from operating department	69,463 94	
Fuel on hand	30,000 00	
Due from Post Office Department	5,512 50	
Land not necessary for road	17,382 22	
Materials and work in shops	79,301 00	
Balances due from agents and others	49,567 06	
Montgomery County bonds	100,000 00	
Capital stock of Co. rec'd for bonds	254,100 00	
Seven per cent. 3d mortgage bonds unsold	451,800 00	
		$1,157,234 23
		$8,355,678 64

LIABILITIES.

Capital stock		$2,521,890 08
Ten per cent. bonds due $100,000 per annum, from April 1st, 1859, to April 1st, 1863	$500,000 00	
Seven per cent. bonds, Crawfordsville and Wabash, due Jan. 1st, 1863	175,000 00	
Eight per cent. bonds, $125,000 due May 1st, 1864, and $200,000 per annum from May 1, 1865, to May 1st, 1875	2,325,000 00	
Seven per cent. 2d mortgage bonds, due Jan. 1st, 1873	1,000,000 00	
Seven per cent. 3d mortgage bonds, due Feb. 1st, 1865	1,000,000 00	
49 Ten per cent. income bonds	17,500 00	
Six per cent. bonds issued to cont'rs	12,870 00	
Deferred interest payable in bonds	197,152 00	
		5,227,522 00
Bills payable and bal. due operatives	311,789 89	
Due sundry persons on open account	9,792 14	
		321,582 03
Balance at credit of profit and loss		284,684 53
		$8,355,678 64

Increase of the assets of the New Albany and Salem Railroad Company, from July 1st, 1856, to January 1st, 1857.

Construction and right of way	$162,030 60	
Depots	62 02	
Cars	5,000 00	
Locomotives	1,284 68	
Real estate	570 00	
Increase of permanent assets		$168,947 30
Cash	$930 02	
Due from operating department	2,338 68	
Due from agents and others	18,649 10	
Increase of ordinary assets		$21,917 77
Total increase		$190,865 07
Less decrease in fuel	$8,999 14	
Post-Office Dep't & materials in shop	19, 01	
Balance on stock-subscriptions	1,246 07	
Lands not necessary for road	920 25	
Decrease of ordinary assets		$11,184 47
Balance of increase		$179,680 60

Increase of the liabilities of the New Albany and Salem Railroad Company, from July 1st, 1856, to January 1st, 1857.

Capital stock		$10,065 77	
	Due on open account	1,450 55	
50	Seven per cent. bonds	1,000 00	
	Profit and loss	190,531 65	
Total increase			$203,047 97
Less decrease in bills payable and bal. due operatives			23,367 37
Balance of increase			$179,680 60

And afterwards, to wit, at a circuit court of the United States, begun and holden at Indianapolis, in the district aforesaid, on the eighth day of December, eighteen hundred and fifty-seven, present the honorable Elisha M. Huntington, judge as aforesaid, come the parties by their counsel, and complainant has leave to amend his bill by alleging the citizenship of said defendants, which is done, and on motion of complainant said defendants are required to answer said bill, plead or demur thereto, at January rules, 1858, to which rule-day this cause is referred.

And the complainant files the following petition:

DOUW D. WILLIAMSON, TRUSTEE, &C.,
vs.
THE NEW ALBANY AND SALEM RAILROAD CO.

The New Albany and Salem Railroad Company respectfully represent, that on the day of October, A. D. 1857, Douw D. William-

son, trustee for the bonded debt secured by sundry mortgages, in the complainant's bill fully set forth, applied to this court at chambers for the appointment of a receiver, and the court upon full consideration of all facts, and the hearing of the arguments of counsel, did make an order that from and after that date the directors of said company should apply one-half of the net earnings of the road to the payment of the floating debt, and pay the other half into court for further order, but upon the application of the defendant the said order was modified as follows:

That the said New Albany and Salem Railroad Company, from and after the 1st day of January, A. D. 1858, set aside one-half of the net earnings of the road for the payment of the interest of the bonded debt of said company, the other half to be applied to the floating debt of the said company; a report of the gross and net earnings to be made monthly to the court by the secretary of (the) said company, that is, for the month of January, and at the end of each succeeding
51 month, so soon as the returns can be received and made out, half of the net earnings to be paid into court for the bondholders.

The company will report, also, to the court, how the net earnings have been expended from the first of November to the first of January, as aforesaid, which said order has been regularly entered upon the minutes of the court at the present term.

And the said company would further represent that, by virtue of said order, the directors of said company were, as they understood, made the custodians of all the property of said company, to be used and appropriated as therein set forth, and that in accordance with such understanding they proceeded to use said property and its earnings in the equitable distribution and payment of the floating debt of said company, but since the making of said order, Alfred W. Tilton, George Phillips, Benjamin Harrison, Thomas S. Bellows, James Gibson, and William S. Hallett, citizens of Indiana, having obtained judgments against said company prior to the making of the foregoing order, have ordered executions to be issued upon their several judgments, and agreeable to such order the several courts have issued executions upon said judgments, and have placed them in the hands of the sheriff of White County, Indiana, and Bryant Deotur, a constable in and for the county of Clark, Indiana, and Richard Roe, a constable in and for the county of Pulaski, Indiana. By virtue of said executions the said sheriff and constables have made their levies upon the wood in the possession of and belonging to said company, purchased and procured for the special purpose of running its trains, and in the possession of said company prior to the making of said order, and have taken the same into their possession, and have advertised the same for sale at public vendue to satisfy said judgments and executions, whereby the said company is in a very great measure interfered with and prevented from obeying and carrying out the order of the court. For by reason of the aforesaid levies, the wood that is daily necessary for the use of said company's engines, machine-shops, and for other purposes of the business of the said company, has been taken out of its possession, which has greatly embarrassed the working of the road.

And further, that there are a large number of judgments existing against said company, and if they are suffered to enforce them, it will be impossible for the said company in any way to work the road,
52 and by permitting their judgment creditors to enforce their claims, they will thereby gain a preference, and prevent said company

from making a just and equitable distribution and payment of the floating debt, according to the order of the court.

Now, therefore, the said company prays that the said Alfred W. Tilton, George Phillips, Benjamin Harrison, Thomas S. Bellows, James Gibson, and William S. Hallet, (to) be restrained and enjoined from collecting their said judgments in any other manner than as directed by the said order of this court, and that the said sheriff and constables be restrained and enjoined from selling or otherwise disposing of the said property so levied upon, and that they be commanded to return said property into the possession of said company; and that the floating-debt creditors be all restrained from interfering with the said order.

COOPER & McLEAN,
Attorneys for Complainants.

United States circuit court for the district of Indiana.

William G. Cooper, one of the attorneys, being duly sworn, deposes and says that he has read the above, and knows of his knowledge that the facts therein set forth are true.

WM G. COOPER.

Subscribed and sworn to before me this 8th day of Dec., 1857.
HORACE BASSETT, *Clerk.*

And this cause came on to be heard upon the petitions filed on the 8th day of December, 1857, by the defendants, the New Albany and Salem Railroad Company, and the argument of counsel, and the court being fully apprized of the matters therein contained, and having fully considered thereof, do hereby order the writ of injunction of this court to issue, enjoining the said Alfred M. Tilton, George M. Phillips, Benjamin Harrison, Thomas S. Bellows, James Gibson, and William S. Hallet, and also the sheriff of White County, Indiana, Bryant Detour, a constable for the county of Clark, Indiana, and Richard Roe, a constable in the county of Pulaski, Indiana, from any further proceedings by way of execution, or any process now issued or to be issued from any court, by which any of the wood or (any) other personal property of the said defendants, the New Albany and Salem Railroad Company, shall be taken from the possession of said company and sold or appropriated in any manner to the payment of the debts or
53 judgments due said parties above named; and the said sheriff of White County, Indiana, and the said Bryant Detour, constable for the county of Clark, and Richard Roe, constable for the county of Pulaski, are hereby enjoined from taking any other steps, under or by virtue of any writ of execution in their hands, against the said defendants, the New Albany and Salem Railroad Company, and from selling any of the property of said company now levied upon and in their possession by virtue of any writs of execution, but they are hereby commanded forthwith to return any such property to the custody and control of the said defendants, the New Albany and Salem Railroad Company, and all parties are hereby restrained and enjoined from, in any manner, either by legal process or otherwise, interfering with any of the property of the defendants, the New Albany and Salem Railroad Company, heretofore by the order of this court placed in the custody of the directors of said company, to be appropriated and applied as therein set forth.

November term, 1857.

And afterwards, to wit, on the fourth day of January, one thousand eight hundred and fifty-eight, that being the twenty-eighth judicial day of the same November term, as last aforesaid, present the same judge, as aforesaid, the parties come, and the defendants refile their demurrer, and this suit is set down for argument on to-morrow, and day is given until the next term of this court.

And on the seventh day of January, eighteen hundred and fifty-eight, come now the parties, and this cause is continued until the next term of this court.

May term, 1858.

And afterwards, to wit, at a circuit court begun, continued, and holden at Indianapolis, in the district aforesaid, on the 23d day of June, in the year of our Lord 1858, that being the 29th judicial day of the May term of said court, before the Hon. Elisha M. Huntington, judge of said district.

This cause came on to be heard upon the petition filed on the 23d day of June, A. D. 1858, by the defendants, the New Albany and Salem Railroad Company, and on argument of counsel, and the court being fully apprised of the matters therein contained, and having fully
54 considered thereof, do hereby order the writ of injunction of this court to issue, enjoining the said Hamilton K. Mathias, and the said firm of Root, Rust and Clark, and also Charles Frederick, the sheriff of Floyd County, Indiana, from any further proceedings by way of executions or other process now issued, or to be issued from any court, by which any of the wood or other personal property of the said defendants, the New Albany and Salem Railroad Company, shall be taken from the possession of said company and sold or appropriated in any manner to the payment of debts or judgments due the said parties above named, and the said sheriff of Floyd County, and the said Hamilton R. Mathias, and the said firm of Root, Rust and Clark, are hereby enjoined from taking any further steps, under or by virtue of any writ of execution in their hands, against the said defendants, the New Albany and Salem Railroad Company, and from selling any of the property now levied upon and in their possession by virtue of any writs of execution, but they are hereby commanded forthwith to return any of such property to the custody and control of said defendants, the New Albany and Salem Railroad Company, and all parties are hereby restrained and enjoined from, in any manner, either by legal process or otherwise, interfering with any of the property of the defendants, the New Albany and Salem Railroad Company, heretofore by the order of this court placed into the custody of the directors of said company, to be appropriated and applied as therein set forth.

And also, on the same day, it appearing by the petition of D. D. Williamson, the complainant in this case, and the trustee for all the holders of all the bonds of the different classes issued under the several mortgages or deeds of trust referred to in the bill of complaint in this cause, which said petition is now filed in this court and is in the nature of a supplemental bill, that subsequent to the filing of said original bill in this cause, and subsequent to the last term of this court, an agreement or basis of settlement and adjustment of the conflicting interests arising under said several trusts has been entered into, which said

agreement is fully set forth in said petition, and it appearing by due proof that the same has been duly executed, and in this court, to wit, by the New Albany and Salem Railroad Company, and by the persons holding two hundred and sixty-two thousand dollars of the ten per cent. first-mortgage bonds, and by the persons holding one million six hundred and ninety-eight thousand dollars of the eight per cent.
55 first-mortgage bonds, and by the persons holding nine hundred and forty-four thousand dollars of the seven per cent. second-mortgage bonds, and by the persons holding four hundred and seventy-one thousand and four hundred dollars of the seven per cent. third-mortgage bonds, and by the persons holding two hundred and eighty-five thousand and eighty-six dollars of the income-bonds, and by the persons holding twenty-six thousand nine hundred and fifty-two shares of the capital stock in said railroad company, and it appearing that the whole amount of bonds issued by said railroad company of all the different classes forming the subject-matter of and referred to in said bill of complaint, is for the aggregate sum of four million seven hundred and seventy-five thousand dollars, and it appearing that said agreement and settlement, above referred to, has been executed by the holders of three-fourths of the whole of said aggregate amount, and in fact by a majority, in interest, in each of the said several classes of bonds, and by a majority, in interest, of the said capital stock:

And it appearing, on the reading of the original deeds of trust executed for the benefit of the several holders of said bonds under the same, that said trustee could be required, only upon the written application of the holders of at least one-half of said bonds remaining unpaid under the said several deeds of trust, in case of default, to proceed and foreclose said several mortgages or either of them, or cause said railroad and premises to be sold, and it appearing on the hearing of this case that it will be for the protection and preservation of said trust-estate, and for the interest of all parties concerned in said trust and the due execution thereof, it is hereby ordered and decreed that said agreement and settlement be carried into effect on the joint motion of John L. Ketchum and others, counsel for said complainant, and R. Crawford and others, counsel for said defendants, and by and with the consent of said complainant and said defendant that the said agreement and basis of settlement, above referred to and particularly set forth in said petition filed in this case, and which is in the words and figures following, to wit:

"The petition of Douw D. Williamson respectfully showeth unto your honorable court that on or about the day of , last past, your petitioner filed in this court his bill of complaint against the New Albany and Salem Railroad Company, stating therein and substan-
56 tially setting forth the several mortgages and deeds of trust duly executed by the said New Albany and Salem Railroad Company to your petitioner, as trustee for the several bondholders of the various classes of bonds issued under said deeds of trust and mortgages, and for the particulars of which said several bonds and mortgages your petitioner prays leave to refer to the originals of the same, ready to be produced to this court as they may direct, and also prays leave to refer to said original bill for full description of the same, and your petitioner further shows that said original bill stated in substance that said New Albany and Salem Railroad Company have made default in the payment of the interest-coupons attached to said bonds, and that they have failed to pay the interest according to the terms of the said several bonds, and that large amounts were, at the time of filing said original

bill, due and unpaid, and for the particulars of which your petitioner prays reference to said deeds of trust and said original bill, and your petitioner in said original bill prayed this court for a decree of sale of said mortgaged premises set forth in said several mortgages and deeds of trust, and a distribution of the proceeds of said sale among the holders of the said several bonds according to the priority of lien which they severally might have under said deeds of trust, and for a foreclosure of said several mortgages, and for such other and further relief as your honorable court might deem equitable and just.

"And your petitioner further shows that the defendants in said original bill have appeared herein and demurred thereto, but have not yet put herein any answer thereto; and your petitioner further shows to this honorable court, in supplement to his said original bill of complaint filed in this cause, that subsequent to the filing of said original bill, and subsequent to the last term of this court, an agreement or basis of settlement and adjustment of all the conflicting interests arising under said several deeds of trust or mortgages, in the words and figures following, to wit:

"*Basis of adjustment proposed by the president and directors of the New Albany and Salem Railroad Company to the stockholders and bondholders.*

"In order to prevent a long and most expensive litigation, not only with the company, but among the different classes of bondholders themselves, and the consequent sacrifice of a valuable property by law expenses or forced sale, it is proposed by, and the president and
57 directors of the said railroad company submit to the several bondholders and stockholders of said road, the following as a basis of adjustment:

"1st. That the bondholders of the ten per cent. bonds ($500,000) secured by mortgage on one hundred and twelve miles of the south end of said road, which fall due from 1859 to 1863, and which the company cannot pay, will consent to extend the same for ten years, receiving new coupon-sheets for the period of such extension.

"2d. That the bondholders of the eight per cent. bonds ($2,325,000) which fall due previous to 1875, will consent to renew or extend the same until the year 1875, receiving new coupon-sheets for such period; and that the holders of the said ten per cent. and eight per cent. bonds continue to hold their mortgage liens on said road unimpaired.

"3d. So soon as that part of the floating debt secured by the directors and officers of the road, or by others at their request, amounting to about $75,000, shall have been paid, or so soon as the above-mentioned parties shall have been released from all liabilities created by endorsements or otherwise, or which it may be necessary to create in the prosecution of the business of the road, the company shall surrender the road, its appurtenances, property, and assets, to the holders of the second and third mortgage bonds and income-bonds, who shall reorganize the company with a capital stock never to exceed $3,000,000, to be issued by the company and denominated new stock; the said several bondholders in this section named shall surrender their bonds, and convert the same and all interest that may be due and unpaid on the same at the time this agreement goes into effect, with other said new stock at par.

"4th. The holders of the present stock of the company to have t e

privilege of surrendering the same, and receiving therefor ten per cent. of the amount in said new stock.

"5th. The deferred interest and the interest to accrue, on the said 8's and 10's up to and including that to fall due in May, 1858, to be converted into said new stock, and the interest on said last-named bonds from May, 1858, to May, 1859, inclusive, to be settled by drafts of said company on their treasurer, payable out of any money in the treasury after payment of the interest on the bonded debt of said company as re-organized, and before any dividend is paid on the other said new stock, and that the coupons for said interest shall be deposited
58 with and held by a trustee as security for the payment of the said drafts. The true intent being that all the net proceeds arising from said road after the now existing floating debt is extinguished, as hereinafter provided, shall be applied first to the payment of the interest on its said bonded debt, second to the extinguishment of said drafts, before any dividend shall be made on said stock.

"6th. In order to enable the company thus organized to operate the road efficiently and profitably, and to place it at the earliest practicable period in a condition to pay the interest on its bonded debt and the drafts above referred to, all net proceeds shall be applied to the payment of the floating debt up to May, 1859, inclusive, if necessary. But if said floating debt can be extinguished at an earlier date, then all net proceeds shall be applied to payment of interest and drafts as aforesaid.

"7th. Such portion of the floating debt as is not due to operatives of the road, nor to individuals for wood and supplies, and such as is not secured by deed of trust or endorsement, to be paid in lands of the company not required for their corporate purposes, or in said new stock of said company at par, at the option of such creditor.

"8th. The bondholders, in the new organization of said company, to nominate a treasurer, who shall from time to time receive all net proceeds of said road, and to whom monthly accounts shall be rendered.

"9th. Said treasurer shall be confirmed by said board of directors, and shall give such reasonable security as they may require.

"10th. In consideration of the conversion by the holders of second and third mortgage and income bonds of their several bonds into new stock, as hereinbefore provided, and that the relative position of the bondholders and stockholders under the new organization, as herein provided, may be preserved, it shall be incompetent for any board of directors to execute any further or other mortgage, or prior lien upon said road, except for the purpose of retiring the already existing mortgages, without the consent of those holding or representing three-fourths of the stock.

"11th. The company, as re-organized, would stand as follows, to wit:

"BONDS.

"Crawfordsville and Wabash R. R. bonds	$175,000
"Ten per cent. bonds	500,000
"Eight per cent. bonds	2,325,000
"Total bonded debt	$3,000,000

59 "STOCKS.

"The second-mortgage bonds converted	$1,000,000
"The third-mortgage bonds	548,200
"Income-bonds	402,400
"Old stock, $2,250,000, at 10–100	225,000
"Deferred interest on 8's and 10's to May, 1858	354,000
"Deferred interest on subsequent bonds	208,012
"Contingencies, land damage, &c	62,388
"Total stock	$2,800,000

"12th. The board of directors as now organized, and the board of directors as re-organized, should pass all resolutions necessary and proper for carrying into effect any and all of the above provisions.

"'In accordance with the foregoing propositions—

"'1st. We, the undersigned, holders of the ten per cent. bonds due in 1859, '60, '61, '62, and '63, agree to extend the principal of the same ten years, receiving new coupon-sheets for the same period, still holding our lien on the road as now unimpaired, provided the interest now due and accruing up to April, 1858, inclusive, is converted into new stock, and the interest from April, 1858, to April, 1859, be settled by the drafts, agreeably to stipulations and provisions above mentioned.

"'2d. We, the undersigned, the holders of the eight per cent. bonds due in 1864, '65, '66, '67, '68, '69, '70, '71, '72, '73, '74, and '75, agree to extend the principal of the same to the year 1875, and to take new coupons extending through the same time, still holding our lien on the road unimpaired, and to convert all back interest, and that which shall accrue up to May, 1858, inclusive, into new stock, and to receive for interest to accrue from May, 1858, to May, 1859, inclusive, drafts of the company on their treasurer, agreeably to the stipulations and provisions above mentioned.

"'3d. We, the holders of the second and third mortgage bonds, and of six per cent. bonds, hereby agree to surrender the same and the coupons and certificates of interest due and to accrue up to May 1st, 1858, inclusive, on receiving an equal amount of the stock of the company at par.

"'4th. We, the holders of the income-bonds, hereby agree to surrender the same on receiving an equal amount of the stock of the company at par, but the coupons of the same are to be cancelled and not converted.

60 "'5th. We, the holders of the present stock, hereby agree to surrender the same to be cancelled, on receiving ten per cent. of the amount in the stock of the company at par.

"'6th. We, the said several bondholders and stockholders, do hereby mutually agree, and the said president and directors of the said railroad company in their corporate capacity do hereby agree with the several bondholders and stockholders, that we will severally carry out and abide by the several stipulations, provisions, and conditions herein mentioned, and it is hereby further mutually agreed, that if the provisions and stiplations above referred to cannot be carried out and perfected by obtaining the consent of a majority of the parties in interest, that the aid of the courts shall be invoked to enter a decree, by the consent of the parties hereto, in the suit now pending, embracing the above propositions, or, if deemed best by counsel, through new judicial proceed-

ings based upon such consent, such decree may be entered embracing such propositions; provided that all parties not joining in the agreement shall be allowed ninety days after the date of settlement, or after the date of the decree, to avail themselves of the proposition above named.

"'7th. In the event of the inability to obtain the general consent of all parties in interest, we, the holders of the second and third mortgage and income bonds and six per cent. bonds, in case of a sale of the road by judicial proceedings, and the purchase thereof by us, or on our behalf, subject to the prior mortgages thereon, agree to carry out all the provisions and stipulations incumbent on us to do by this agreement, it being the intent to carry out the true spirit of this agreement with all the subscribers hereto, upon like position and terms as if all the stockholders and several bondholders subscribed hereto and consummated this agreement without sale, and to give all parties coming in within ninety days from the date of the decree the full benefit of this agreement. And, in case it should be necessary in order to carry into full effect this agreement, that an act of the legislature should be passed, all the bondholders and stockholders hereby mutually agree to accept such act of the legislature based upon and pursuant to the provisions herein contained.

"'JAMES BROOKS, *President.*'

"Had been duly executed, to wit, by the New Albany and Salem Railroad Company, and by the persons holding two hundred and
61 sixty-two thousand dollars of the ten per cent. first-mortgage bonds, mentioned in said bill of complaint, and by the persons holding one million six hundred and ninety-eight thousand dollars of the eight per cent. first-mortgage bonds, mentioned in said bill of complaint, and by the persons holding nine hundred and forty-four thousand dollars of the seven per cent. second-mortgage bonds, and by the persons holding four hundred and seventy-one thousand and four hundred dollars of the seven per cent. third-mortgage bonds, and by the persons holding two hundred and eighty-five thousand and eighty-six dollars of the income-bonds, all the last-mentioned bonds being the same referred to in said bill of complaint, and by the persons holding twenty-six thousand nine hundred and fifty-two shares of the capital stock of said railroad company; which said agreement and settlement, duly executed as aforesaid, your petitioner now here brings into court, and to which your petitioner refers.

"And your petitioner further shows unto this court that the whole amount of bonds issued by said railroad company of all the different classes forming the subject-matter of and referred to in said bill of complaint, is the aggregate sum of four million and seven hundred and seventy-five thousand dollars, and that said agreement and settlement above referred to has been signed by the holders of three-fourths of the whole of said aggregate amount, and in fact by a majority in interest of the whole aggregate of each of the said several classes of bonds, and by a majority in interest of the said capital stock of said company.

"And your petitioner further shows that by the terms of the original deeds of trust executed for the benefit of the several holders of said bonds under the same, that in case of default your petitioner, as trustee, could be required, only upon the written request of the bondholders of at least one-half of said bonds remaining unpaid under the said several deeds *deeds* of trust, to proceed and foreclose said several mortgages, or either of them, or cause said railroad to be sold.

"And your petitioner further shows that the persons who have executed said agreement aforesaid are the cestui que trusts so far forth for whose benefit said original bill was filed.

"And your petitioner further shows that the several bonds issued and on said deeds of trust are made payable to bearer, and have been negotiated, and that the several persons now holding the same
62 are unknown to your petitioner, other than those who have executed said agreement as aforesaid.

"And your petitioner further represents to this honorable court, that it will be for the protection and preservation of said trust-estate, and for the interest of all parties concerned in said trust and the execution thereof, that the said suit and all interest arising under the same and said deeds of trust, should be settled and determined agreeably to said agreement, and upon the basis of the settlement above referred to.

"And your petitioner prays that said agreement and basis of settlement above set forth may be ratified and confirmed by this court, and that an interlocutory decree may be entered upon the same, and that all parties interested in said trust-estate who have not yet signed said agreement or have not appeared in this cause, be permitted, on such notice as this court may deem proper, to come in and avail themselves of its provisions and benefits, or that they severally show cause at the next term of this court why a final decree shall not be entered on the same, determining, embracing, and concluding all interest under the said several mortgages or deeds of trust and in the capital stock of said company, and for such other and further relief in the premises as may seem to this court equitable and just.

"And your petitioner will ever pray, &c.

"D. D. WILLIAMSON.

"CITY, COUNTY, AND STATE OF NEW YORK:

"Before me came D. D. Williamson, to me known, who, being duly sworn, did depose and say that the foregoing petition, by him signed, is true to the best of his knowledge and belief, except such portions as are stated on information, which he believes to be true.

"D. D. WILLIAMSON.

"Subscribed and sworn before me this 29th day of May, 1858.

[SEAL.] "EDWIN F. COREY,

"*Notary Public in and for the City of New York, and*

"*Commissioner for the State of Indiana.*

"In testimony whereof I have hereunto affixed my official seals.

[SEAL.]

"Circuit court of the United States for the district of Indiana.

"The petition of Douw D. Williamson respectfully shows unto this honorable court that he is the trustee for the several holders
63 of the different classes of bonds issued by the said New Albany and Salem Railroad Company.

"And your petitioner further shows that a suit has been commenced in this honorable court to foreclose the said several mortgages executed by said company, and that since said suit was commenced an agreement and basis of settlement has been duly executed by three-fourths of all the holders of bonds issued by said company, and that proceedings have been taken to have said agreement confirmed by this court.

"And your petitioner further shows that said railroad is in very embarrassed circumstances, and that there are certain debts of a confidential character incurred in good faith by those who are directly responsible for the same for the benefit of the trust-estate, said debts being incurred either as furnishing the said railroad or furnishing its equipments and for conducting its business, and at the special request of said company and the assurance and guarantee of its authorized officers and agents that they should be treated or deemed confidential and preferred, that the same amount to about seventy-five thousand dollars, and that there is a further sum of about seventy-five thousand dollars, as your petitioner is informed and believes, which is due to the operatives, laborers, and employees of said road, for their work and labor upon said road.

"And your petitioner hereby represents to this honorable court that it will be for the best interest of all parties concerned in the said several deeds of trust in said bill of complaint set forth, and promote the interest of all the bondholders under said trust, that the said debts should be paid with the least possible delay, in order that the agreement and settlement herein before referred to may be carried out, and the trust-estate preserved and made available; that the net proceeds arising from the business and traffic of said road, after paying the necessary expenses of operating the said road and carrying on the business and traffic of the same, and keeping the said road, its appurtenances, fixtures, bridges, buildings, machinery, and rolling-stock in good order and repair, should be applied to the payment of said confidential indebtedness, and their indebtedness to said operatives, laborers, and employees above mentioned, until the same is paid, with power given to the trustee to apply such part of the said proceeds to the purchase of new engines and cars,
and in making repairs of damages by the recent fire and floods,
64 as shall be deemed absolutely necessary to carry on the business of said road without sacrifice or detriment.

"And your petitioner further shows that in order to effectually so carry out his trust, and the sooner to and more effectually to avail himself of the benefit of said trust-estate, and the more effectually to preserve the same, your petitioner prays that he may be authorized and empowered to borrow, and on such terms as to time and interest as he may find expedient, a sum not exceeding two hundred thousand dollars, for the sole purposes and uses above mentioned, and to repay such sum and interest as he may borrow under or by virtue of this order, out of the first net proceeds of said trust-estate, from whatever source the same may arise, and that he may be authorized and empowered by this court to secure the payment of such said sum as he may borrow under this power, in such form as he may deem best, upon all the net proceeds of said railroad and upon said trust-estate, and prior to any and all liens existing thereon.

"And your petitioner further shows that, in order to effect said loan, and to effect such security as above mentioned, it is necessary, and he therefore prays, that the possession of said road and all engines, cars, and rolling-stock, machinery, tools, and property, both real and personal, and appurtenances of the same, be delivered to him, said trustee, to be held by him until such time as the said sums above referred to be fully repaid, and that whenever such sums shall be repaid in full, said trustee shall surrender, at their request in writing, to the directors of said railroad company, the said railroad, fixtures, engines, cars, rolling-stock, machinery, and all the said property, both real and personal, and that in the mean time said road shall be run and operated through and by

such directors, officers, agents, employees, and laborers as your petitioner, trustee as aforesaid, may deem best, liable only for a faithful discharge of his duty according to the best judgment of your petitioner as aforesaid, and that in case of the death of your petitioner as aforesaid, the same powers and authority he prays may be executed by his legal successors, provided that said railroad company shall not be required to surrender the said railroad and appurtenances to said trustee above mentioned until the said confidential indebtedness to amount of seventy-five thousand dollars is paid or allowed in said trust.

65 "And your petitioner further asks and prays that such other and further relief may be granted in the premises as the nature of the case requires and as shall be agreeable to equity.

"And your petitioner will ever pray, &c.

"D. D. WILLIAMSON.

"CITY, COUNTY, AND STATE OF NEW YORK:

"Before me came D. D. Williamson, to me known, who, being duly sworn, did depose and say that the foregoing petition, by him signed, is true to the best of his knowledge and belief, except such portions as are stated on information, which he believes to be true.

"D. D. WILLIAMSON.

"Subscribed and sworn to before me this 28th day of May, 1858.

[SEAL.] "EDWIN F. COREY,

Notary Public in and for the State of New York,
Commissioner of Deeds in and for the State of Indiana.

[SEAL.] In testimony whereof I have hereunto affixed my seals."

In supplement to the said original bill be, and the same is hereby ratified and confirmed, and that a decree interlocutory be, and the same is hereby, entered upon the same, making it the decree of this court; provided, nevertheless, and it is thereby further ordered, that ninety days notice shall be given by publication in the New Albany Ledger, and New Albany Tribune, newspapers published in vicinity of New Albany, State of Indiana, and also two newspapers printed daily in the city of New York, to all stockholders of the capital stock of said company, and to all holders of bonds under said several mortgages, or deeds of trust, who have not signed said agreement, and have not appeared in said suit, that they have severally ninety days from the date of said notice, by the provisions of said agreement, to come in and avail themselves of its provisions and benefits, or that they severally show cause, on the first day of the next term of this court, why a final decree should not be entered on the same, embracing, determining, and concluding all interests under the said several mortgages or deeds of trust, and in the capital stock of said company.

And also, on the same day, and on the joint motion of the counsel for said complainant, and for the said defendants, it is hereby further ordered that a certain order, entered in this cause on the 17th day of November, 1857, requiring the said railroad company to pay into

66 court the one-half of the net proceeds arising from the earnings of said road, be and the same is hereby rescinded, and that the money paid into court under said order be paid over to Douw D. Williamson, the trustee in this cause.

And also, on the same day, this cause coming on to be heard on the petition of said complainant, and it appearing that it is for the interest

of all parties concerned in the trust set forth in the bill of complaint in this cause, and by the consent of the plaintiff and defendants, and on the joint motion of the counsel of said complainant and the counsel of said defendants, it is hereby ordered that the net proceeds arising from the business and traffic of said road, after paying the necessary expenses of operating and carrying on the business of the same, and for supplies, repairs of its road, cars, bridges, buildings, fixtures, and machinery, and keeping the same and its rolling-stock good and in repair, be applied to the payment of the confidential indebtedness of said company, mentioned in schedule A, hereto annexed, which is in the words and figures following, to wit:

"Schedule of that part of the floating debt of said company which is secured by the directors and officers of said company, and by others at their request, viz:

"Amount due at sundry banks in Louisville, Ky.....	$50,132 20
"Amount due at sundry banks in New Albany.....	7,436 00
"Amount due in sundry banks in Michigan City.....	1,800 00
"Amount due in sundry banks in Lafayette.....	1,000 00
"Amount due in sundry banks in New York.....	17,807 62
"Total.....	$78,175 82

"The above debts from time to time are renewable, or charged in individual account, and other paper given, and with the aggregate debt remains the same. The institutions or individuals to whom the same may be payable, and the endorsers of the same, are charged as the business and necessities of the road may require.

"STATE OF INDIANA, *Floyd County, ss:*

"George Lyman, secretary of the New Albany and Salem Railroad Company, being sworn, says that the floating debt of said company which is secured by the directors and officers of said company,
67 and by others at their request, amounted on the 21st day of June, 1858, to the sum of seventy-eight thousand one hundred and seventy-five dollars and eighty-two cents.

"GEORGE LYMAN.

"Subscribed and sworn before me this 21st day of June, 1858.
[SEAL.] "W'M W. TUTTLE,
"*Notary Public, Floyd County, Indiana.*"

Not exceeding the sum of seventy-five thousand dollars, and the payment of operatives, men, and laborers, and necessary expenses in repairs of damages by the recent fire and floods to said railroad, on said railroad, not exceeding the further sum of one hundred and twenty-five thousand dollars until the same is paid; and in order to enable the said trustee the more effectually to carry out his trust, and the sooner and more effectually to avail himself of the benefits of the trust-estate, and the more effectually to preserve the same, the said trustee is hereby authorized and empowered, in his discretion, to borrow a sum or sums not exceeding two hundred thousand dollars, on such terms as to time and rate of interest as he shall deem best, for the sole purpose of paying off said confidential indebtedness, and other debts above referred to; and the said trustee is hereby authorized and required to repay such sum and interest as he may in his discretion borrow under the power hereby given, out of the first net proceeds of said trust-estate, from whatever source

the same may arise; and said trustee is hereby expressly authorized to secure the repayment of such sum or sums as he may borrow, as aforesaid, in such form as he may deem best, upon all the net proceeds of said road, and upon said trust-estate, and prior to any and all other liens upon the same.

And it is hereby further ordered, by the consent of said complainant and defendants, that in order to enable said trustee to effect such loan, and to effectually secure the same, that the possession of said road and all its fixtures, engines, cars, rolling-stock, machinery, tools, and property, both real and personal, and all appurtenances of the same, be delivered to said trustee, to be held by him until said sums above referred to be fully repaid; and that whenever such sums shall be repaid in full, said trustee shall surrender, at their request in writing, to the directors of said company, the said road, fixtures, engines, cars, and all of said property, both real and personal; and that, in the mean time, the said road shall be run and operated through and by such directors,
68 officers, agents, employees, and laborers as the said trustee shall deem best; the said trustee being liable personally only for a faithful discharge of his trust in carrying out the same according to his best judgment, and in case of the death of said trustee, the same powers and duties hereby conferred upon said Douw D. Williamson, as trustee, shall be had and exercised by his lawful successor in said trust.

Provided, that such portion of said net proceeds may be appropriated by said trustee to the purchase of such necessary engines and cars, and for the repairs of damage by the recent fire and floods to said railroad, as he may deem best for the interest of said trust-estate; and

Provided, that such real estate and other property as may not be necessary for the uses of said road may be applied in settlement of the indebtedness of said company, and

Provided, that said R. R. Co. shall not be required to surrender up the possession of said railroad and its appurtenances, as above mentioned, until the said confidential indebtedness above mentioned is paid or arranged to an amount not exceeding seventy-five thousand dollars, and all questions touching the payment of the costs herein, and the expenses of the complainant as trustee, incurred in the execution of his trust in this behalf, including the prosecution of this suit, and touching the expenses incurred in the defense thereof, are reserved for further consideration by the court.

And afterwards, to wit, at a circuit court begun and holden at Indianapolis, in the district aforesaid, on the 11th day of December, in the year of our Lord, 1858, that being the 22d judicial day of the November term of said court, before the Hon. Elisha M. Huntington, judge of said district:

Comes the plaintiff, and proves that a publication giving notice to all stockholders of the capital stock of said company, and to all holders of bonds, under said mortgages or deeds of trust, who have not signed said agreement, and have not appeared in this action, that they have severally ninety days from the date of said notice, by the provisions of said agreement, to come in and avail themselves of its provisions and benefits, or show cause on the first day of the next term of this court why a final decree shall not be entered on the determining and concluding all interests under said mortgages and deeds of trust, and in the capital stock of said company, was published once a week, consecutively,
69 for ninety days, beginning on the 10th of July, 1858, in the New York Journal of Commerce, and the Evening Post, both published in the city of New York.

And on the 16th of December, 1858, being the twenty-fifth judicial day of the November term of the United States circuit court, is the following, to wit:

(Continued from p. 579, Record No. 5.)

DOUW D. WILLIAMSON, TRUSTEE, &C., *against* THE NEW ALBANY AND SALEM R. R. CO., *et al.*

Be it remembered, that on the 16th day of December, 1858, come the parties, complainants and defendants, by their several counsel, and this cause coming on to be heard, and it appearing that an interlocutory decree was duly entered in this cause on the 25th day of June last, defining and confirming the basis of settlement and adjustment of the conflicting interests arising under the various deeds of trust set forth in the bill of complaint in this cause, and of the various bondholders, stockholders, and creditors of said company, and other persons, and which interlocutory decree is now here before the court, and it appearing by the proof now on the file of this court that ninety days' notice has been duly given by publication in the New Albany Ledger, and the New Albany Tribune, newspapers published daily in the City of New Albany, State of Indiana, and also in the New York Journal of Commerce, and the Evening Post, two newspapers printed daily in the city of New York, to all stockholders of the capital stock of said company, and to all holders of bonds under said several mortgages or deeds of trust who have not signed the said agreement or basis of settlement, in said interlocutory decree mentioned, and have not appeared in said suit, that they have severally ninety days from the date of said notice, by the provisions of said settlement, to come in and avail themselves of its provisions and benefits, or that they severally show cause on the first day of the next term of said court why a final decree should not be entered on the same, embracing, determining, and concluding all interests under the said several mortgages or deeds of trust, and in the capital stock of said company.

And it appearing that since the date of said notice the persons 70 holding thousand dollars of the 10 per cent. first-mortgage bonds, and the persons holding thousand dollars of the 8 per cent. first-mortgage bonds, and the persons holding thousand dollars of the 7 per cent. second-mortgage bonds, and the persons holding thousand dollars of the third-mortgage 7 per cent. bonds, and the persons holding thousand dollars of the income-bonds, and the persons holding thousand dollars of the 6 per cent. construction-bonds, and the persons holding thousand dollars of the floating debt, and the persons holding thousand dollars of the capital stock in said company's schedule, a part of which is herewith filed, having appeared and accepted the provisions of said settlement, it is hereby ordered that said several parties last above mentioned be, and they are hereby, entitled to the provisions and benefits of said settlement.

And no person having appeared to show cause, according to the order of this court, why the said interlocutory decree should not be made final, and on the joint motion of the counsel for complainants and defendants, it is hereby ordered, adjudged, and decreed that said interlocutory decree be, and the same is hereby, made absolute and final.

And it is further ordered, adjudged, and decreed that all interests under the said several mortgages or deeds of trust, and in the capital

stock of said company, and all interests of bondholders, stockholders, and creditors are hereby embraced, determined, and finally concluded.

And it appearing, by proof herewith filed, that that part of the floating debt secured by the directors and officers of said railroad company, to the amount of seventy-five thousand dollars, has been paid by said D. D. Williamson, trustee, and that the said directors and officers have been released from all liabilities created by endorsements or otherwise.

And it appearing, also, that said D. D. Williamson, trustee as aforesaid, has paid the further sum of one hundred and twenty-five thousand dollars to operatives, men, and laborers, in pursuance of and according to the provisions of a special order or decree of this court, entered therein on the 25th day of June last, and the equities of all and every person having any interest whatever in the said trust-estate, whether as bondholder, stockholder, or creditor, those who have subscribed said basis of settlement as well as those who have not, being properly
71 before this court, according to the rules and practice of this court and of its equitable powers, have been heard, determined, and concluded.

It is hereby, therefore, specially ordered, adjudged, and decreed that the said railroad, with its rights of way, and all its fixtures, engines, cars, rolling-stock, machinery, tools, assets, and property, both real and personal, and all appurtenances of the same, be surrendered to the holders of the second and third mortgage bonds and income-bonds, subject to the provisions and conditions in the 3d article of the basis of settlement above mentioned, and the court does hereby order and decree that the several holders of the bonds issued under the original second and third mortgages or deeds of trust executed to said D. D. Williamson, trustee, as aforesaid, to wit:

The holders of the second and third mortgage bonds and income-bonds are hereby declared to be tenants in common of the said railroad and its property, both real and personal, and appurtenances, with the same relative interests and proportions in the same that the amounts of the said several bonds held by them severally bear to the aggregate amount of the said second and third mortgage bonds and income-bonds, and that the interest of each of said bondholders in said property shall be in proportion to the amount of bonds held by him.

And it is hereby further ordered that, upon the surrender up by the said several holders of said second and third seven per cent. mortgage-bonds, and of said income-bonds, to the trustee therein named, a certificate shall be issued showing in effect the proportionate interest such holder of said bond shall be entitled to in said railroad and its effects and property, both real and personal, its appurtenances, franchises, and proceeds, and they are hereby invested with the absolute title in fee, (subject only as hereinafter mentioned,) with the free and unincumbered ownership and title (except as hereinafter mentioned) of, in, and to said railroad and all its fixtures, rights of way, engines, cars, rolling-stock, machinery, tools, assets, and property, real and personal, and all the franchises and corporate rights and privileges granted under the charter of said company, or by amendments thereto: to have and hold and to exercise the same free and clear from all incumbrances, claims, or liens of any person or persons whatever.

But the same is hereby declared to be subject in all things to a certain mortgage executed by the Crawfordsville and Wabash Rail-
72 road Company, for one hundred and seventy-five thousand dollars, and assumed by said New Albany and Salem Railroad Company, the same being upon that part of said railroad between Lafayette and

Crawfordsville, and subject to a certain other mortgage executed to said Douw D. Williamson, as trustee, by said New Albany and Salem Railroad Company, upon one hundred and twelve miles of the south end of said road, for 500,000 dollars, executed to secure the holders of ten per cent. bonds to that amount, subject to said last-mentioned mortgage, the lien of which is to remain valid, and the principal of which is hereby decreed to be paid in ten years from the time when the said several bonds shall fall due, and subject, also, to a certain other mortgage executed to said Douw D. Williamson, as trustee, by said New Albany and Salem Railroad Company, for the sum of two million three hundred and twenty-five thousand dollars, ($2,325,000,) executed to secure the holders of eight per cent. bonds to the said amount, the lien of which last-mentioned mortgage is to remain valid and unimpaired, and the principal of which is decreed to be paid on the first day of May, eighteen hundred and seventy-five, and for the particulars of which last-mentioned mortgages or deeds of trust reference is hereby made to the original mortgages or deeds of trust duly of record and now produced in this court; and the same is hereby further subject to the payment of all interest which shall accrue or grow due from time to time on the said last two-mentioned deeds of trust, and upon the eight and ten per cent. bonds issued under said deeds of trust, or any one of them, from and after the first day of May, A. D. 1859, and for which interest new coupon-sheets shall be issued, but not subject to a lien for the interest accruing on said eight and ten per cent. bonds previous to said first of May, 1859.

And it is further ordered and decreed that said persons holding said second and third and income-bonds are hereby invested with all the rights and privileges of said New Albany and Salem Railroad Company on all its property, both real and personal, and all its franchises and rights of way of every kind, subject as aforesaid, and as hereinafter further described, and that said second and third mortgage and income bondholders are hereby invested with said property, both real and personal, and all appurtenances and franchises, free and clear of all incumbrances, debts, judgments, or claims, except as specifically
73 provided herein, and except the balance due to operatives and laborers, and claims on demand assumed by said trustee.

Provided, nevertheless, that the said several stockholders, upon surrendering their capital stock in said company, shall be entitled to an interest in said railroad property, both real and personal, its appurtenances and franchises, as tenants in common with said second, third, and income bondholders, in the proportions severally that ten per cent. of the stock surrendered shall bear to the whole amount of the second, third, and income bonds, and the interest accruing on the eight and ten per cent. bonds up to April, 1858, and such amount of the floating debt as the holder may convert into to the common interest, and the holders of the interest accruing on the said 8's and 10's up to May, 1858, and of the floating debt, shall be entitled also to such an interest in said property, real and personal, appurtenances and franchises, as the several amounts surrendered by them bear to the whole.

And it is hereby further ordered and decreed that after putting the said road, its cars, engines, buildings, fixtures, and machinery and rolling-stock in good order and repair, and keeping the same in repair, and paying the necessary expenses of operating and carrying on the business and traffic of said railroad, that all the net proceeds arising from the traffic of said railroad from and after the first day of May, 1859, shall be applied, part to the payment of the interest accruing from and

after the first day of May, 1859, on the eight and ten per cent. bonds hereinbefore mentioned, from time to time, as the same may fall due, and the amount falling due on said Crawfordsville and Wabash bonds as the same may mature, and that out of any surplus which may remain after paying the amounts falling due as aforesaid, from time to time, the said interest falling due on said eight and ten per cent. bonds up to May, eighteen hundred and fifty-nine, shall be paid before any dividend shall be made under any new organization, and any surplus remaining after said payment shall be divided pro rata among the holders or owners of said railroad, its appurtenances, franchises, and property, as tenants in common, in proportion to their respective interests in the same:

Provided, nevertheless, that this decree and all its provisions are hereby declared specially to be subject to all the provisions and stipulations mentioned and contained in a certain other decree or order
74 rendered in this cause on the 23d day of June last, by which said road was ordered to be surrendered to D. D. Williamson as special trustee, for the purpose of raising by loan the sum of two hundred thousand dollars, to wit, seventy-five thousand dollars to pay off the confidential indebtedness of said company, and the sum of one hundred and twenty-five thousand dollars for the payment of operatives, men, and laborers, which said last referred to order is still in full effect and force, and by virtue of which the said railroad is now operated, and this decree is specially subject to the provisions and conditions of the said last-mentioned decree or order, and in no way shall contravene or impair the effect or provisions thereof.

And it is hereby further ordered that the holders of the second, and third, and income bonds, and of the remaining floating debt, shall have the right to surrender the same at any time hereafter, and also the holders of any part of the capital stock of said company shall have the right to surrender the same, and upon the surrender of such bonds, or capital stock, or debts, to receive and be entitled to the same proportion of interest in said railroad and its property, appurtenances, and franchises as is herein provided and is stated in said basis of settlement, and all such bondholders and stockholders and creditors are hereby absolutely barred from enforcing any claim or interest they may have in any of said bonds, or stocks, or debts in any other mode than above provided, and shall not be entitled to any interest or dividend until the same are surrendered as herein provided for.

And by the covenant and agreement of the parties hereto it is hereby ordered and decreed that reasonable compensation still remaining unpaid to the counsel employed, as well by the plaintiffs as by defendants in this suit, shall be paid as a part of the costs and expenses of this suit by D. D. Williamson, trustee under said mortgages or deeds of trust, out of any trust-funds in his hands, or which may come to his hands as such. But the amount of such compensation, if not agreed upon by the parties, shall be hereafter determined by this court, and it is ordered and directed that the matter of said further compensation be reserved till the further order and decisions of this court. And to ascertain the amount of such reasonable compensation to said several counsel, and the amount of payment to any of them in this cause as to such compensation, is referred to John H. Rhea, esq., to take proof, if necessary, and report to the judge of this court, at chambers, at
75 the March rules, 1859, when the judge may order such compensation as shall seem reasonable from said report.

And on the 7th day of January, 1858, the following additional affidavit of John B. Anderson, in the foregoing-entitled suit, was filed in the clerk's office, in the words following, to wit:

JOHN B. ANDERSON, of New Albany, Indiana, being duly sworn, deposes and says, in addition to the affidavit heretofore made in this cause, that since the commencement of this suit Erasmus Gest visited New Albany, and stated to this deponent and to the president of said railroad company his intention of passing over said railroad at the request of some of the parties interested. That deponent stated to said Gest that to go by the regular train would cause him to pass over some part of the road in the night, and that if he so preferred a special train would be placed at his disposal, with instructions to stop as often and as long as said Gest might desire and direct, and that deponent would accompany him. That said Gest did avail himself of the offer, and passed over that part of the road between New Albany and Greencastle, a distance of one hundred and thirty-nine miles, or thereabouts, by a special train, running at the usual speed of the mail-train; and on the next day from Greencastle to Michigan City, on the regular mail-train. That said Gest stated to deponent that to examine the road so as to form a correct opinion of its condition and capacity would require one month; that he had time to give it only the cursory examination he was then giving it.

Deponent further says that said Gest did not demand of deponent an opportunity of examining the books and accounts of said railroad company, but that said Gest did, while at Greencastle, express a desire to have a statement of the receipts and disbursements of said railroad company for the six months ending June 30th, 1857, in the same form as had been stated in the half-yearly reports of the president of said company to the stockholders and bondholders for previous period of six months, which reports he then had in his possession, one or more of which had been handed him on the previous day by the said president, at New Albany; that deponent said to said Gest that the books and accounts of the said company had always been open to the inspection of complainant and the bondholders, and that deponent believed that monthly statements had been rendered to complainant, who would,
76 doubtless, exhibit them to said Gest on his arrival in New York.
That said Gest stated that he would not probably visit New York for some months. Deponent then stated that without the aid of the secretary at New Albany he, said deponent, was unable to state with any accuracy the amount of the receipts and disbursements, as desired by said Gest.

And deponent further says that the said Gest proceeded to Chicago on the evening of the day on which he went north from Greencastle, without stopping at Michigan City, intending (as he stated to deponent) to proceed from Chicago to Cincinnati via the Michigan Southern and Cincinnati, Hamilton and Dayton Railroad, and that said Gest did not return over the said New Albany and Salem Railroad to New Albany, and deponent believes that the said Gest has not since visited New Albany.

J. B. ANDERSON.

SOUTHERN DISTRICT OF OHIO, *ss:*

Sworn and subscribed before me October 21st, 1857.

WM MINER,
Clerk U. S. Cir. Court, S. D. of Ohio.

And on the 27th day of February, 1858, the following agreement in the foregoing-entitled cause was filed in the clerk's office, in the following words, to wit:

Whereas, in the month of August last, a suit was commenced in the United States circuit court for the district of Indiana, by Douw D. Williamson, trustee for the bondholders of the New Albany and Salem Railroad Company, praying for a foreclosure of the mortgages on said road, and the appointment of a receiver, and

Whereas, in the month of October last, said court, sitting in chambers in Cincinnati, Ohio, heard the question of the appointment of a receiver, and decided that after the first day of January, 1858, the said railroad company should use one-half of the net earnings of said road to pay its floating debt, and deposit the other half in said court for the benefit of the bondholders, and

Whereas there was a mortgage for $175,000 on that part of said road between Crawfordsville and Lafayette, which mortgage, in addition to the security of the road, had been further secured by the deposit in the hands of J. F. D. Lanier, of New York, of $10,000 of the bonds
77 of Montgomery County, Indiana, the property of said railroad company, as collateral security for the payment of the principal and interest on said bonds; and if said interest is not promptly paid will subject the company and all parties interested to a loss of the sale and probable sacrifice of said bonds and proceedings for a foreclosure of said mortgage:

In order to prevent such sacrifice, and to prevent further loss and litigation, I, Douw D. Williamson, trustee for the bondholders in said road, and complainant in above-stated suit, hereby authorize the officers of the New Albany and Salem Railroad Company to pay over such portion of the money which was by the above-named decision ordered to be paid into court, as may be necessary to pay the interest from time to time as it matures, and that which is now due on the $175,000 Crawfordsville and Wabash Railroad bonds, and hereby authorize any of the attorneys employed in this case, on either side, to apply to the court for an order sanctioning the same, and it is mutually agreed between said trustee and said railroad company that no advantage shall be taken of the apparent deviation from the order of the court, which this agreement would seem to make necessary.

D. D. WILLIAMSON,
Trustee for Bondholders of N. A. & S. R. R. Co.
JAMES BROOKS,
President of N. A. & S. R. R. Co.

NEW YORK, *February 6th*, 1858.

And on the same day as aforesaid was filed the following reports of the earnings of said New Albany and Salem Railroad Company for the months of November and December, 1857, and January, 1858, in the words and figures following, to wit:

Statement of the receipts and expenses of the New Albany and Salem Railroad Company for the month of November, 1857.

RECEIPTS.

For freight	$22,926	26
For passage	23,637	96
For mail and express service	3,587	50
Total receipts	$50,151	72

EXPENSES.

	Depot service, per paymaster's report..	$2,415 09	
78	Train service, " "	2,586 28	
	Water-stations, " "	276 00	
	Locomotives, " "	2,385 19	
	Repair of track, " "	6,581 35	
	Construction, " "	158 75	
	Fuel purchased, " "	3,237 22	
	Expense of machine-shops, "	8,267 15	
	Salaries of officers, ag'ts, incidental exp's....	2,822 72	
	Damage, per paymaster's average.....	1,058 91	
	Oil and waste, " "	1,953 08	
	Supply of trains, shown in general acc't....	455 08	
	Expense of machine-shops, " "	1,850 47	
	Total expenses.....		$34,007 30
	Net earnings		$16,144 42

The above amount of net earnings, say sixteen thousand one hundred and forty-four dollars and forty-two cents, were expended as follows:

Payment of notes and other obligations of said Co., shown in her accounts as floating debt.....	$14,049 17
Disbursed by paymaster on sundry pay-rolls for services of operatives not returned by him.....	2,095 25
	$16,144 42

STATE OF INDIANA, *Floyd County, ss:*

George Lyman, secretary of the New Albany and Salem Railroad Company, being sworn, says that the foregoing statement of the receipts and expenses of said company, so far as made from his own knowledge, is true, and so far as stated upon information of others, he believes to be true.

GEORGE LYMAN.

Subscribed and sworn before me this 26th day of February, 1868.
Witness my hand and notarial seal.
[SEAL.]

Notary Public of Floyd County, Indiana.

Statement of the receipts and expenses of the New Albany and Salem Railroad Company for the month of December, 1857.

79 RECEIPTS.

For freight	$34,720 02	
For passage	19,340 24	
For mail and express service	3,587 50	
Total receipts		$56,647 76

EXPENSES.

Depot service, per paymaster's report	$2,534 13	
Express-train, " "	1,171 46	
Freight-train, " "	2,485 55	
Repair of track, " "	7,135 99	
Construction, " "	237 00	
Track purchased, " "	969 20	
Locomotive service, " "	3,168 47	
Expense of machine-shops, "	9,320 14	
Repair of bridges, "	938 12	
Damage, per general average	1,138 90	
Expense of machine-shops, gen'l av'ge	1,094 91	
Running expense, general average	2,007 96	
Officers' salaries, incidental expenses, etc	3,414 41	
Total expenses		$35,614 44
Net earnings		$21,033 32

The above amount of net earnings, say twenty-one thousand and thirty-three dollars and thirty-two cents, were expended as follows:

Payment of notes and other obligations of said Co., as shown in her general account	$16,790 33
Paid on pay-rolls, by paymaster to operatives	4,242 99
	$21,033 32

STATE OF INDIANA, *Floyd County, ss:*

George Lyman, secretary of the New Albany and Salem Railroad Company, being sworn, says that the foregoing statement of the receipts and expenses of said company, so far as made from his own knowledge, is true, and so far as made from the information of others, he believes to be true.

GEORGE LYMAN.

80 Subscribed and sworn to before me this 26th day of February, 1858.

Witness my hand and notarial seal.

[SEAL.]

Notary Public of Floyd County, Indiana.

Statement of the receipts and expenses of the New Albany and Salem Railroad Company for the month of January, 1858.

RECEIPTS.

For freight	$20,312 02	
For passage	18,385 57	
For mail and express service	3,587 50	
Total earnings		$42,285 09

EXPENSES.

Depot service, per paymaster's report.....	$2,336 64	
Train " " "	3,389 63	
Repair of track, " "	7,537 14	
Expense of shops, oil, waste, "	10,637 25	
Fuel purchased, per paymaster's "	5,157 01	
Repair of bridges, " "	940 61	
Repair of track, shown in general acc't.....	329 62	
Running exp's, officers' and ag'ts' s'al's.....	5,138 94	
Total expenses		$35,466 84
Net earnings		$6,818 25

Memorandum.

Money sent to clerk of U. S. court.....	$409 15	
Sent to New York, as per agreement.....	3,000 00	
		$3,409 15

STATE OF INDIANA, *Floyd County, ss:*

George Lyman, secretary of the New Albany and Salem Railroad Company, being sworn, says that the foregoing statement of the receipts and expenses of said company, so far as made from his own knowledge, is true, and so far as made from the information of others, he believes to be true.

GEORGE LYMAN.

81 Subscribed and sworn to before me this 26th day of February, 1858.

Witness my hand and notarial seal,
[SEAL.]

Notary Public of Floyd County, Indiana.

And on the 30th day of March, 1858, was filed in the clerk's office, the following statement for the month of February, in the foregoing entitled case, in the words and figures following, to wit:

***Statement** of the receipts and expenses of the New Albany and Salem Railroad Company for the month of February, 1858.*

RECEIPTS.

For freight.....	$12,573 02	
For passage.....	13,761 16	
For mail and express service.....	3,587 50	
Total receipts.....		$29,921 68

EXPENSES.

Expense of machine-shops.....	$10,387 18	
Fuel purchased	7,936 99	

Running expenses, depot, train-service....	7,643 00	
Repairing track and bridges.....	6,270 96	
Oil and waste, (January included).....	3,788 34	
Incidental expenses.....	1,720 35	
Total expenses.....		$37,746 82
Deficit carried forward to March.....		$7,825 14

STATE OF INDIANA,
Floyd County, ss :

George Lyman, secretary of the New Albany and Salem Railroad Company, being sworn, says that the foregoing statement of the receipts and expenses of said company, so far as made from his own knowledge is true, and so far as made from the information of others, he believes to be true.

GEORGE LYMAN.

Subscribed and sworn before me this 29th day of March, 1858.
[SEAL.] W'M W. TUTTLE,
Notary Public, Floyd County, Indiana.

And on the 28th day of April, 1858, was filed as aforesaid, the
82 following report for the month of March, 1858, in the words and figures following, to wit :

Statement of the receipts and expenses of the New Albany and Salem Railroad Company for the month of March, 1858.

RECEIPTS.

For freight.....	$18,455 41	
For passage.....	20,858 85	
For express service.....	1,750 00	
For mail service.....	1,837 50	
Total receipts.....		$42,901 76

EXPENSES.

Expense of machine-shops and locomotive service.....	$11,531 50	
Fuel purchased.....	3,546 23	
Running exp's, depot and train service....	9,847 60	
Repairing track and bridges.....	8,059 81	
Damages, incidental expenses, etc.....	3,841 41	
		$36,827 35
Total net earnings per March.....		$6,075 41
Deficit per month of February, 1858.....		$7,825 14
Deficit carried forward to April.....		$1,749 73

STATE OF INDIANA,
Floyd County, ss :

George Lyman, secretary of the New Albany and Salem Railroad Company, being sworn, says that the foregoing statement of the receipts

and expenses of said company, so far as made from his own knowledge, is true, and so far as made from the information of others, he believes to be true.

GEORGE LYMAN,
Secretary of N. A. & S. R. R. Co.

Subscribed and sworn to before me this 27th day of April, 1858.
W. W. TUTTLE,
Notary Public of Floyd County, Indiana.

83 And on the 25th day of May, 1858, was filed as aforesaid the following report for the month of April, 1858, in the words and figures following, to wit:

Statement of the receipts and expenses of the New Albany and Salem Railroad Company for the month of April, 1858:

RECEIPTS.

For freight	$22,798 14	
For passage	20,044 08	
For express service	1,250 00	
For mail service	1,837 50	
Total		$45,929 72

EXPENSES.

Running exp's, depot and train service	$7,123 34	
Repairing track and bridges	9,100 51	
Expense of shops, locomotive service	12,042 43	
Materials for shops, etc	1,673 77	
Fuel purchased	4,517 82	
Oil and waste, (March and April supply)	3,648 69	
Incidental expenses	1,796 75	
	$39,903 31	
Deficit brought forward per March	1,749 73	
		$41,653 04
Net		4,276 68
Amount subject to order of court		2,138 34
Amount sent to J. F. D. Lanier, of New York, to invest in Crawfordsville & Wabash bonds, as per agreement		3,000 00
payment carried forward to May		861 66

STATE OF INDIANA,
Floyd County, ss:

George Lyman, secretary of the New Albany and Salem Railroad Company, being sworn, says that the foregoing statement of the receipts and expenses of said company, so far as made from his own knowledge, is true, and so far as stated upon information of others, he believes to be true.

GEORGE LYMAN.

84 Subscribed and sworn to before me this 26th day of May, 1858.

W. W. TUTTLE,
Notary Public of Floyd County, Indiana.

And on this 16th day of December, 1858, there was filed, as aforesaid, the following proof of payment, in the words following, to wit:

George Lyman, secretary of the New Albany and Salem Railroad Company, being sworn, says that Douw D. Williams, the above-named trustee, has since the 6th day of October, 1858, paid on account of the endorsed and confidential debt of said New Albany and Salem Railroad Company, secured by the directors and officers of said road, and by others at their request, the sum of seventy-five thousand dollars, in pursuance of and according to the decree hereto annexed.

And further, that said Williamson, as trustee aforesaid, has since the said 6th day of October, 1858, paid on account of the former indebtedness of said company to laborers and operatives, and for supplies and materials furnished said company prior to said 6th day of October, 1858, the sum of one hundred and twenty-five thousand dollars and upwards, in pursuance of said decree; and that said directors and officers have been indemnified or released from all liabilities incurred by endorsement or otherwise.

GEORGE LYMAN.

Subscribed and sworn to before me, a notary public in and for the county of Floyd, and State of Indiana, by the said George Lyman, on this 14th day of December, A. D. 1858.

Witness my hand and notarial seal.

[SEAL.] J. H. STOTSENBURG,
Notary Public.

And on the same day as aforesaid there was filed as aforesaid the following "subscription of stocks and bonds to December 9th, 1858," in the words and figures following, to wit:

List of subscribers of stock and bonds to the compromises between the New Albany and Salem Railroad Company and its bondholders whose subscriptions were subsequent to the decree of the United States district court in June, 1858, and prior to December 9th, 1858.

85 Names.	Residence.	Shares.	Dollars.
W'm H. Carney	Bloomington, Ind	2	100 00
L. Draper	" "	10	500 00
Joseph M. Howe	" "	25	1,250 00
I. O. Howe, sen.	" "	47	2,350 00
Arthur Morrow	Gosport	1	50 00
John Baker	Bedford	90	4,500 00
William Twining	Crawfordsville	12	600 00
Jacob Wain	"	150	7,500 00
Lazarus B. Wilson	New Albany	116	5,800 00
John Rice	" "	3	150 00
Oliver M. Wilson	" "	2	100 00
Henry Clay Wilson	" "	2	100 00
Mary S. Wilson	" "	2	100 00
Grace E. Wilson	" "	2	100 00
Alice B. Wilson	" "	2	100 00
Franklin Wilson	" "	2	100 00
W. S. Culbertson	" "	125	6,150 00
Jno. C. Culbertson	" "	12	600 00
Horace Holyoke	" "	1	50 00
Andrew Farrell	" "	2	100 00
Henry Lake	" "	36	1,800 00
Thomas Sinex	" "	13	650 00
John R. Nunemaker	" "	2	100 00
Mrs. J. Plout	" "	60	3,000 00
G. C. Cameron & Co.	" "	3	150 00
William Brown	" "	18	900 00
W'm M. Lane	Bedford	253	12,650 00
Hiram H. McLean	"	17	850 00
W. G. Raymond	Akron, Ohio	36	1,800 00
Ed. F. Shields	Salem	29	1,150 00
John F. Keyes	"	3	150 00
R. R. Dewey	"	3	150 00
Thomas G. Deming	"	2	100 00
Thomas B. Coombs	"	10	500 00
Washington County, Ind.	"	400	20,000 00
Kate Townsend	Greencastle	41	2,050 00
Evans Wright, ex	Salem	6	300 00
Wiley Williams	Gosport	103	5,150 00
Jacob Daggy	Greencastle	54	2,700 00
86 Alfred G. Benton	Greencastle	2	100 00
H. T. Wakefield	"	12	600 00
J. S. White	"	2	100 00
Jesse McPheters	"	10	500 00
John S. Jennings	"	76	3,800 00
R. L. Hathaway	"	42	2,100 00
D. B. Alexander	"	16	800 00
James Shields	"	2	100 00
James Gillespie	"	10	500 00
H. S. Mark	"	6	300 00
Putnam Lodge, No. 45	"	4	200 00
Daniel Harrah	"	4	200 00
Jas. E. McOhan	"	10	500 00
Alex. Black	"	20	1,000 00
Edward Black	"	5	250 00
Sol. Henry	"	1	50 00
F. V. Allsion	"	18	900 00
Hiram P. Allen	"	5	250 00
Parris C. Dunning	Bloomington	20	1,000 00
James D. Robertson	"	12	600 00
Samuel Hardesty's heirs	"	11	550 00
W'm C. Foster	"	42	2,100 00
Jno. M. Berry	"	2	100 00
G. D. Berry	"	2	100 00
W'm Bryant	"	2	100 00
John Goodnight	"	3	150 00
Coonrod Kein	"	7	350 00
Emory Bross	"	3	150 00
Thomas McCalla	"	85	4,250 00
Robert C. Hammill	"	4	200 00
John M. Ship	"	23	1,150 00
David D. Dillman	"	4	200 00
L. G. Shuza	"	30	1,500 00
Andrew Wiley	"	23	1,150 00
M. Maloney	Greencastle	5	250 06
J. Anderson, sen.	Louisville, Ky	30	1,500 00
J. W. Anderson	" "	30	1,500 00
Mary Cline	Adair, Ind	45	2,250 00
Shares		2,325	
Stock			$116,150 00

87 SIX PER CENT. BONDS.

Priscilla Bullitt, New Albany	60 00
Edmund Newby, " "	760 00
J. Chase, Salem	100 00
Benoni Morris, " about	600 00
Robert Morris, " "	400 00
	$1,920 00

SEVEN PER CENT. THIRD MORTGAGE.

B. Crane, sen., Greencastle	$2,400 00

RECAPITULATION.

Stock	116,150 00
Six per cent. bonds	1,920 00
Seven per cent. 3d mortgage bonds	2,400 00

And afterwards, to wit, at the May term of said court, on the 27th day of May, A. D. 1859, before the honorable John McLean, and the honorable E. M. Huntington, judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

Now comes Wm. G. Cooper, in their own proper persons, and on motion it is ordered by the court that the question as to the attorneys' fees in the above-entitled cause, as well for the plaintiffs as the defendants, is hereby referred to John H. Rea, esq., United States commissioner, for settlement and allowance, with full power to take and hear such testimony as he may deem necessary, and make such allowance as he may think just and proper in the premises, from the commencement of the above suit to the present term of this court.

And it is further ordered that the commissioner shall make a final report, at the next term of this court, of such allowance.

And afterwards, to wit, at the term last aforesaid of said court, on the 28th day of May, A. D. 1859, before the honorable Judge McLean aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, and the plaintiff files his supplemental bill herein, and it is, on his motion and by consent, ordered by the court that

88 Mary Bedford, Samuel Hiser, C. N. Vanhorn, Bastridge and Temple, Sarah Justice, Silas Baird, William Peterson, S. Romig, A. Robinson, John T. Huff, T. Alcar, the board of commissioners of Tippecanoe County, William H. Johnson, Spears, Hanna & Co., John Kassidy, S. Kiher, Hickman & Heath, John F. Sellers, William Combs, John Duncan, Samuel Chesin, Samuel Lewis, Joseph G. Mackpheeters, Root, Rust & Clark, William C. Campbell, John Fain, Morris Fielding, John Westfall, Lewis McCoy, William Cash, Hamilton R. Mathias, Samuel Davis, Peter J. Jollicant, Samuel King, Mathew W. Campbell, A. D. Mees, Abraham Chrishan, Morris Bair, Daniel K. Wood, Phillip Bair, Bernard Hunship, Warren Christian and David Christian, Henry Dow, James McKinley, William S. Hallett, Keller Asher, Benjamin Harrison, Willam Roland, Peter Sudfin, Micajah Hancock, Thomas S. Bellows, Jeremiah Comstock, Joseph Gibson, Jefferson Wampler, John McCowan, Ralph Stone, James A. Baker, Allen

Asher, Moses McCarty, Jesse P. Petro, Henry C. Petro, Frederick Weolin, Alfred W. Tilton, Gabriel Long, William McBains, Thomas Fise, George Bishop, George McNamara, William Pace, John G. Masder, Jesse Aston, Thomas Collins, Granville Beeler, David T. Mead, Leonard Petro, Philander E. Colby, John Powell, Willam Conley, James McMaston, William S. Foster, Benjamin Rogers, William R. Webb, John Sandy, James B. Harra, Jacob Hovish, Frederick T. Butler, Lyman W. Commissiva, James Haskell, Jesse B. Petro, and all other persons having judgments against said New Albany and Salem Railroad Company, their agents, servants, and attorneys, be, and they are hereby, perpetually restrained and enjoined from levying upon or in any manner interfering under and by virtue of any writ of execution, now or hereafter sued out upon any such judgment against said company, with the cars, rolling-stock, including fixtures, tools, engines, and property, both real and personal, of every description, heretofore belonging to said New Albany and Salem Railroad Company, and surrendered by said company under and by virtue of the decree of this court, or any property which may come into the hands of said Williamson, his successors in said trust, or the holders of the second and third mortgage bonds, and income-bonds, issued under the second and third mortgages or deeds of trust executed to said Williamson; and inasmuch as the equities of all and every person having any interest whatever in said property so surrendered, as aforesaid, have been heard, determined, and concluded by the decree of this court at the last term thereof:

89 It is further adjudged and decreed that said Williamson, his successors in said trust, and the holders of said bonds aforesaid, in accordance with the provisions of said decree, have and enjoy the possession of said property surrendered, and all property which may be by them or any of them acquired in connection with said trust, and necessary to the full exercise of the rights and franchises transferred under said decree against the claims of the parties hereinbefore named, and all other judgment-creditors of said company.

And the said supplemental bill is in the words and figures following, to wit:

Circuit court of the United States for the district of Indiana.

DOUW D. WILLIAMSON, TRUSTEE, &c., *vs.* THE NEW ALBANY AND SALEM RAILROAD CO., and others.

Said Douw D. Williamson respectfully represents, that since the rendition of the decree in said cause by this honorable court, on the 16th day of December, A. D. 1858, divers and sundry persons who had obtained judgments against the said New Albany and Salem Railroad Company, a list whereof will be found set forth in the paper marked A, which is prayed to be taken as part hereof, said persons threaten to sue out execution upon said judgments and levy upon the property, which, by the terms of said decree, was exclusively vested and appropriated for certain specific purposes, as in said decree is set forth, and certain of them have actually sued out executions, as will be seen by copies of the executions herewith filed and marked B.

Plaintiff prays that each and all of said persons, their agents, servants, and attorneys, and all others who may from time to time attempt to sue out executions upon judgments rendered in their favor and

against said company, may be perpetually enjoined and restrained from levying upon or in any manner interfering with the cars, rolling-stock, machinery, or any property of any description heretofore ordered to be surrendered by the terms of the decree aforesaid, or which may hereafter come into the hands of said trustee by virtue of said decree.

OTTO, &c., *P. G.*

Wm. G. Cooper states that the matters above set forth are true so far as the same are of his own personal knowledge, and so far as they are derived from information he believes them to be true.
90 He has been acting as the attorney of said company, and since said decree he has been the attorney of said Williamson, and is as conversant with the matters and affairs of said company as any other person.

WM. G. COOPER.

Subscribed and sworn to before me this 27th day of May, 1859.

HORACE BASSETT, *Clerk.*

And the paper mentioned in the above bill marked A, is in the words and figures following:

DOUW D. WILLIAMSON, Esq., *Trustee, &c.*

Below please find a statement of the legal affairs of the company in the "attorney's" department, judgments outstanding and finally adjudicated on account of right of way, at the Lafayette district:

CLASS 1.

Mary Bedford	$992 00
Samuel Hiser	73 20
C. N. Van Horn	88 50
Busbridge & Temple	829 50
Sarah Justice	1,248 88
Silas Baird	91 90
Wm. Peterson	83 80
S. Romig	8,343 75
O. Robinson	212 33
John T. Huff, (adm'r)	313 00
F. Atkin	313 50
Tippecanoe County commissioners	313 00
Wm. H. Johnson	197 11
Spears, Hanna & Co	1,700 00
John Cassady	100 00
S. Kiken	555 00
Court and other costs	1,690 80
	$19,146 33

Judgments outstanding and in the supreme court, on account of right of way, at Lafayette district.

CLASS 2.

John T. Huff	$3,105 50
91 Daily	225 00

Hickman & Heath	2,200 00
This amount includes costs.	$5,530 50

Awards outstanding on account of right of way at Greencastle.

CLASS 3.

John F. Sellers	$4,000 00
Wm. Combs	100 00
John Duncan	125 00
Samuel Chesim	140 00
Samuel Lewis	75 00
	$830 00

The expenses and costs in these awards has been all paid. The case of John Sellers has been appealed by Sellers to the circuit court, and is still pending.

CLASS 4.—(Settled.)

Judgments outstanding on sundry accounts:

Jos. G. McPheeters, acc't depot at Bloomington	666 00
Jos. G. McPheeters, medical bill	42 00
	$708 00

The costs in these suits have not been taxed. The company has paid its witness-fees.

CLASS 5.

Root, Rust & Clark, bills payable	$1,570 00

Otto & Davis, attorneys. Plaintiffs reside in New York City. Bill was drawn in payment of supplies.

CLASS 6.

William C. Campbell resides near Orleans. The judgment was rendered in court of common pleas, Orange Co	150 00
Costs	15 00
	$165 00
John Fain, Laforte County, justice judgment	55 00
Costs	5 00
	$60 00
Morris Fielding, Monroe County, justice judgment	50 00
Costs	15 00
	$65 00

92	John Westfall, Laporte County, justice judgment	8 00
	Costs	2 82
		$10 82
	Louis McCoy, Pulaski County, justice judgment	34 50
	Costs	4 60
		$39 10
	William Cash, Laporte County, justice judgment	47 50
	Costs	6 60
		$54 10
	Hamilton K. Mathias, Floyd County court of C. P	150 00
	Costs	23 62
		$173 62
	Peter J. Jolicent, Floyd County court of C. P	15 00
	Costs	6 91
		$21 91
	Samuel King, White County circuit court	30 00
	Costs	38 00
		$68 00
	A. D. Meese, White County cir. court, judgment paid	45 00
	Costs unpaid	4 42
		$49 42
	A. S. Kiner, only costs	43 16
	Abraham Christian, Laporte County, justice judgment	10 00
	Costs	3 07
		$13 07
	Morris Bair, Laporte County, justice judgment	5 00
	Costs	2 82
		$7 82
	Daniel K. Wood, Laporte County, justice judgment	20 00
	Costs	3 03
		$23 03

	Philip Bair, Laporte County, justice judgment	30 00
	Costs	2 82
		32 82
93	Bernard Hunship, Laporte County, justice judgment	40 00
	Costs	2 82
		$42 82
	Warren and Daniel Christian, Laporte Co., justice judg't	35 00
	Costs	4 15
		$39 15
	Henry Dow, Laporte County, justice judgment	35 00
	Costs	17 94
		$52 94
	James McKindley, Clark County circuit court, stayed by injunction U. S. circuit court	15 00
	Costs	18 20
		$42 20
	William S. Hallett, Clark County circuit court, stayed by injunction U. S. circuit court	60 70
		$63 79

CLASS 6.—(Continued over.)

CLASS 7.

The following judgments are outstanding, but I have no returns of their amount:

Keller Asher, Owen County, appeal dismissed.
Benjamin Harrison, White County, circuit court.
W'm Boland, Owen County, appeal dismissed.
Peter Sudfin, Monroe County, circuit court.
Macaja Hancock, Pulaski County, circuit court.
Thomas S. Bellows, Clark County, circuit court, injunction.
Jeremiah Comstock, Pulaski County, circuit court.
Joseph Gibson, Clark County, circuit court, injunction.
Jefferson Wampler, Owen County, justice judgment.
John McCowen, Pulaski County, justice judgment.
Ralph Stone, Owen County, appeal dismissed.
James A. Baker, Clark County, circuit court, injunction.
Owen County, appeal dismissed. Allen Asher, and Moses McCarty, justice judgment.

CLASS 8.

Judgments outstanding upon sundry accounts.

94	Jesse P. Petro, ejectment from cars, Pulaska cir. court	25 00

Costs, (costs in this suit ought to be re-taxed).....	166 46
	$180 46
Frederick Meolin, Laporte County, justice judgment.....	50 00
Costs.....	7 00
	$57 00
A. W. Tilton, Pulaski County, injunction.....	13 50

CLASS 9.—(Continued over.)

A. W. Tilton, Pulaski County, replevin suit, injunction..	30 00
Costs.....	23 41
	$53 41
Gabriel Long, Pulaski Co., injunction, judgment for costs.	44 90
William McBair, Michigan City, for supplies, etc.....	222 00
Costs.....	24 86
Paid by this 15, 1858 paid	$246 86

The following are in the supreme court, undetermined:

Frances Fix, resides in Floyd County.
A. W. Tilton, resides in Pulaski County.
George Bishop, resides in Floyd County.
George McNamara, resides in Floyd County.
W'm Pace, resides in Lawrence County.
John Gr. Madien, resides in Lawrence County.
Jesse Aston, resides in Lawrence County.
Thomas Collins, resides in Washington County.
Oranville Beeler, resides in Washington County.
David T. Mead, resides in Washington County.
Leonard Petro, resides in Pulaski County.
Philander C. Colby, resides in Pulaski County.
John Powell, resides in Pulaski County.

The appeal in these cases were taken in term, hence I have no record of the amount of judgment and cost, but none of them exceed $100.

Suits now pending upon sundry accounts:

L. B. Wilson, special verdict, but no judgment, the judge found due him, for services he claimed, $569.00. The cause stands continued upon a motion to dismiss for want of jurisdiction.

95 W'm Canley, resides in Putnam County.
James McMaston, resides in Putnam County.
W'm L. Foster, " " "
Benjamin Rogers, " " "
W'm H. Webb, " " "
John Sandy, " " "
James B. Hanna, " " "

These cases are taken under advisement by the court. The judge found the stock was killed by the company, and stand continued for argument at the next March term.

There was two judgments, as the company inform me, of Jacob Howsh, who resides in Putnam County.

For board	$25 00
	37 00
	$62 00

It very often happens that suits are commenced against the company by service upon the conductors and agents, and in many cases no returns have been made to this office. The result has been that judgments have been rendered against the company without my knowledge, and there may now be other outstanding judgments that I have no knowledge of, but I should think not many. In a short time (if it would answer) I might furnish you with a corrected statement which would be more satisfactory to you and myself, and contain all the information you need, but, as it is, the above statement contains all the information that I am in possession of.

RECAPITULATION.

Whole amount of judgments finally adjudicated upon, on account of right of way, is	$19,146 33
Amount due on awards on account of right of way	830 00
Judgments outstanding on account of right of way, pending in the supreme court is	5,530 05
Judgments on account of bills payable	1,570 00
Whole amount due on judgments, so far as known, on account of stock killed, is	993 82
Whole amount due on judgments on account of sundry accounts, is	811 61
Grand total	$28,881 85

All of which is most respectfully submitted.

W'M G. COOPER.

96 Award on account of right of way, omitted, in favor of Charles Moore $600 00

Amounts supposed to be due on judgments not stated in the within report, not yet finally adjudicated upon.

Francis Fix, inclusive of costs	$100 00
A. W. Tilton	125 00
George McNamara	100 00
W'm Pace	50 00
Jesse Aston	50 00
Thomas Collins	50 00
Granville Beiler	125 00
David T. Mead	40 00
Leonard Petro	130 00
Philander E. Colby	40 00
John Powell	30 00
	$840 60

Amounts supposed to be due upon judgments to the following parties, the amounts of which are not named in the within report.

Keller Asher	$55 00
Benjamin Harrison	160 00
Peter Sudfin	45 00
Allen Asher	100 00
John McCowen	36 00
James Gibson	50 00
	$246 00
W'm Boland	$80 00
Jefferson Wampler	40 00
Ralph Stone	45 00
Thomas S. Bellows	180 00
Thomas H. Baker	40 00
Frederick Butler	50 00
Macaja Hancock	70 00
Jeremiah Comstock	50 00
Moses McCarty	30 00
	$585 00
Total amount of all indebtedness on judgments on account of right of way, including all claims	$26,106 38
97 Total amount of indebtedness on all outstanding judgments, including all other classes, is	$5,040 45
Grand total	$31,246 73
Paid D. W. F. Closser, judgment for wood	823 00
Costs	18 87
	$841 87
Mr. Williamson deposited with Col. New	$1,350 00
Paid W. F. Closser, judgment for wood	126 39
Costs	9 31
	135 70

Col. New was paid these two judgments, and the sheriff's receipt is on file for $1,061.52, balance of the $1,350.00, to wit, the sum of $288.65, applied on the following, leaving the balance of $83.00.

Remaining unpaid—

Lyman W. Commission, judgment for materials	321 79
Costs	10 87
	331 66
$83.00, James Haskell, about	$400 00
Jesse B. Petro	1,200 00

And afterwards, to wit, at the May term aforesaid of said court, on

the 27th day of May, A. D. 1859, before the honorable John McLean, aforesaid, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come the parties, and on motion, the clerk of this court is to pay over to said Douw D. Williamson any monies paid into the clerk's office of this court, under the former order made in the premises, that may remain in the hands of said clerk after the payment of the costs of this suit.

And afterwards, to wit, at the May term aforesaid, of said court, on the 21st day of June, A. D. 1859, before the honorable E. M. Huntington, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Continued.

And afterwards, to wit, at the November term of said court, on the 12th day of January, 1860, before the honorable E. M.
98 Huntington, aforesaid, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Continued.

And afterwards, to wit, at the November term aforesaid, of said court, on the 13th day of January, A. D. 1860, before the honorable Judge Huntington aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Upon motion the continuance is set aside, and master makes a report in these words, to wit:

DOUW D. WILLIAMSON, TRUSTEE, &C., *vs.* THE NEW ALBANY AND SALEM RAILROAD Company. } Chancery.

In pursuance of an order of court made on the day of , 1858, by which was referred to me as master in chancery to look into the account of Richard M. Corwine, esq., for services rendered as attorney for the defendant, and make a report thereon, I hereby report that I have looked into the matter referred as aforesaid, and am of the opinion that Mr. Corwine is entitled to the sum of one hundred dollars, for services rendered as attorney for said company on the motion for receiver.

All of which is respectfully submitted.

JOHN H. REA,
Master in Chancery.

Which report is confirmed and this cause continued.

And afterwards, to wit, at the adjourned term of said court, on the 26th day of January, A. D. 1861, before the honorable S. H. Treat, district judge of the United States for the southern district of Illinois, specially holding said court, the following further proceedings in the above-entitled cause were had, to wit:

Continued.

And afterwards, to wit, at the November term of said court, on the 19th day of November, A. D. 1861, before the honorable S. H. Treat,

judge as last aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Continued.

And afterwards, to wit, at the November term aforesaid, of said
99 court, on the 17th day of December, A. D. 1861, before the honorable Judge Treat, aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes said Williamson and files in this suit his supplemental complaint, alleging, among other things, that there is a debt now due against said railroad company of one hundred and seventy-four thousand six hundred dollars, ($174,600,) and another debt of seventy-five thousand dollars, ($75,000,) will become due next June, and that all the interest of said railroad company's 8 per cent. and 10 per cent. bonds, which accrued in and since the year 1857, was unpaid, and that the expenses of operating said railroad the current season were more than the receipts, and therefore praying for a decree that said railroad and appurtenances may be sold under a foreclosure of the mortgage mentioned in said supplemental complaint.

It is therefore ordered that notice of said application be given by a publication of this order daily for three weeks in the Indianapolis Journal, published at Indianapolis, in Indiana, and the Journal of Commerce, published in the city of New York, for all persons interested in the premises to appear in this court, on the first day of its next May term, and there show cause, if they can, why the prayer of said complaint shall not be granted.

And this cause is continued to the next May term.

The publication to be made by the clerk after February court, unless otherwise ordered by the complainant.

Here follows the supplemental complaint above mentioned.

The supplemental complaint of Douw D. Williamson, a trustee, &c., in his suit as such trustee, in the circuit court of the United States in and for the district of Indiana, against the New Albany and Salem Railroad Company, James Brooks, &c.

Your orator, said Williamson, trustee, &c., by way of supplemental complaint, respectfully shows that on the 1st of August, 1857, as trustee in certain mortgages, he filed his original complaint in said court against said railroad company and said Brooks, and alleging therein among other things, that said railroad company had executed to your orator, as trustee, five mortgages to secure the payment of divers bonds which were issued by said railroad company and sold to divers persons, and which said mortgages conveyed to your orator, some of them parts, and others of them all, of the railroad of said company, together with
100 the cars, locomotives, machine-shops, machinery, and all things appurtenant to said railroad, and authorized your orator, upon default in the payment of the interest of said bonds, and on the request of any of the holders of the same, to enter and take possession of all of said mortgaged property, and use and employ the same to pay the interest which might be due and unpaid, or to sell said mortgaged property and apply the proceeds to such payment; and alleging further, that divers amounts of interest had become due on said bonds and were unpaid, and praying that a receiver might be appointed to take possession of said mortgaged property and the proceeds thereof, and for all other proper relief.

And the defendants named in said complaint afterwards entered their appearance thereto, and your orator filed a supplemental complaint, and such other proceedings were had therein that on the first day of January, 1858, said court entered an interlocutory decree, and on the 25th day of June, 1858, said court rendered a further decree, and on the 16th day of December, 1858, said court rendered a further decree, and on the 28th day of May, 1859, said court rendered a further decree therein, and said action is still pending in said court, and no final decree for sale has ever been rendered therein.

And your orator, for greater certainty and to avoid too great length in this supplemental complaint, makes his said original and supplemental complaints, and all their exhibits, and all papers filed in said action, and all the decrees and orders therein rendered, part of this supplemental complaint by reference.

Your orator now further avers, that since said last-named decree said railroad company has changed its name and assumed the name of the Louisville, New Albany and Chicago Railroad Company, by which it is now known and operated.

A part of said line of railroad, to wit, that portion which lies between Crawfordsville and Lafayette, was begun and partly finished by a corporation called the Crawfordsville and Wabash Railroad Company, and to raise the means to build the same, said Crawfordsville and Wabash Railroad Company issued bonds to the amount of $175,000, and secured the payment of the same by mortgage of the same part of said railroad. Afterwards said last-named railroad company transferred all her right, title, and interest in and to, her said railroad and all its appurtenances to the New Albany and Salem Railroad Company; and the latter,
101 in consideration thereof, assumed and agreed to pay said debt of $175,000. The interest on said sum has been punctually paid. The principal will become due on the 1st of June, 1862.

Provision has been made by which your orator expects and believes $100,000 of said debt will have been paid off by that time, but there will then remain $75,000 of said debt, for which no such provision has been made; and your orator knows of no means by which it can be paid except by a sale of said part of said railroad, under the mortgage given to secure its payment, or by a sale of the whole line of said railroad, under the other mortgages, and paying the said sum out of the proceeds.

All the interest on the $500,000 of ten per cent. bonds issued by the New Albany and Salem Railroad Company, which became due on the 1st of April, 1857, and since then, and all the interest on the $2,325,000 of eight per cent. bonds issued by the same company, which became due in May, 1857, and since that time, is still unpaid.

Of the $200,000 borrowed by your orator pursuant to the decree of this court, the sum of $174,600 is yet unpaid, and now due, and the whole of said mortgaged property is pledged for its payment, and the parties from whom said money was borrowed are pressing your orator for repayment.

When your orator took possession of the railroad, under the decree of this court, it was much out of repair and in want of a large number of locomotives, cars, and other conveniences for operating it, and he incurred large expense in repairing the road-way and bridges, and in procuring and repairing rolling-stock and machinery for the operation of said railroad.

The whole amount received and paid out by him on account of the

railroad, since he took possession of it until the of 1861, is $, and a detailed statement thereof will be filed herewith if required.

Owing to the political disturbances and the consequent depression and interruption of the trade and other business of the country, the transportation of passengers and freight over said railroad has become greatly reduced, and there is a continued necessity for large repairs, and therefore the expense of keeping up and working said road has been, during the current year, more than equal to the receipts from it; and your orator knows of no other practical plan of paying the said sum of $174,600 now due as part of the $200,000 borrowed
102 by him, as aforesaid, and the $75,000 of the Crawfordsville and Wabash Railroad Company debt to become due June, 1862, or the interest accruing on said several mortgages which is now due and in default, than by a sale of the railroad and its appurtenances.

He submits to the court that it would be an unnecessary expense for those to whom the said sum of $75,000 above mentioned is due, to foreclose their said mortgage, as its payment could be better proceeded for in this suit.

And, as the mortgage given to secure said $500,000 of ten per cent. bonds covers only a part of the railroad and its appurtenances, and that to secure the $2,325,000 of eight per cent. bonds covers the whole of the railroad and its appurtenances, but was executed at a later date than the other, he also submits to the court whether the part covered by said first mortgage should be first sold, and separately, to satisfy said debt, or whether the whole railroad and appurtenances should be sold together as an entirety, and the proceeds after paying said sums of $75,000 and $174,600, and accruing interest, be equitably divided between the holders of said ten per cent. and eight per cent. bonds in proportion to the respective amounts due on their several bonds and mortgages, and the balance of proceeds, if any, distributed to the holders of all subsequent bonds and mortgages, or those holding any lien on said mortgaged property, according to their respective priorities.

To the end, therefore, that the defendants may answer this supplemental complaint, and that said railroad, its corporative franchises and appurtenances, may be ordered to be sold for the purposes aforesaid, and that a final decree of sale and foreclosure be entered, and that your orator may have all further relief, &c.,

And as in duty bound, &c.,

R. CRAWFORD,
His Solicitor.

And afterwards, to wit, at the November term, aforesaid, of said court, on the 18th day of December, A. D. 1861, before the honorable S. H. Treat, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the master in chancery, John H. Rea, and files his report herein, in these words, to wit:

DOUW D. WILLIAMSON
against
THE NEW ALBANY AND SALEM R. R. CO. } Chancery, No. 58.

103 In pursuance to an order of court made on the day of , 1859, in these words, to wit:

I hereby report that having examined the evidence as to the account of R. Crawford, esq., counsel, I find he is entitled for his services up to

the November term of this court, as per agreement of complainant, the sum of $1,000.

All of which is respectfully submitted.

JOHN H. REA, *Master.*

And thereupon said report is confirmed, and R. Crawford, esq., is allowed herein for his services as counsel, "one thousand dollars, ($1,000.") And it is ordered that said master in chancery be allowed for his services in this cause, thirty dollars, ($30.)

And afterwards, to wit, at the adjourned term of said court, on the 13th day of February, A. D. 1862, before the honorable judge Treat, aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now John Rea, esq., master in chancery, and files his report in this cause, to wit:

DOUW D. WILLIAMSON, TRUSTEE,
against
THE NEW ALBANY AND SALEM RAILROAD CO. } Chancery.

To the honorable the circuit court of the United States for the 7th circuit and district of Indiana:

In pursuance of an order of court, made on the day of 18 , I have examined the claim of O. H. Smith for services rendered as attorney for said company, as made out by his executors, and find that the same ought to be allowed, and that there is due the estate of said O. H. Smith the sum of one hundred dollars, ($100.)

All of which is respectfully submitted.

JOHN H. REA,
Master in Chancery.

And thereupon by consent said report is confirmed, and said sum of one hundred dollars ($100) is allowed the said O. H. Smith for balance due him for services as counsel for said railroad; and said master is allowed five dollars for his services.

And afterwards, to wit, at the November term of said court,
104 on the 11th day of November, A. D. 1862, before the honorable N. H. Swayne, one of the judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

Continued.

And afterwards, to wit, at the November term of said court, on the 4th day of November, A. D. 1863, before the honorable David Davis, and the honorable Caleb B. Smith, judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

Continued.

And afterwards, to wit, at the May term of said court, on the 6th day of May, A. D. 1864, before the honorable judge David Davis aforesaid, and the honorable A. S. White, judge of the district court of the United States for the district of Indiana, the following further proceedings in the above-entitled cause were had, to wit:

Continued to the next term of the court.

And afterwards, to wit, at the November term of said court, on the

22d day of November, A. D. 1864, before the the following further proceedings in the above-entitled cause were had, to wit:

On motion of Mr. Crawford this cause is continued to the next term of court.

And afterwards, to wit, at the May term of said court, on the 16th day of June, A. D. 1865, before the honorable David McDonald, judge of the district court of the United States for the district of Indiana, the following further proceedings in the above-entitled cause were had, to wit:

Continued to the next term of court.

And afterwards, to wit, at the November term of said court, on the 24th day of November, A. D. 1865, before the honorable David McDonald, aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Continued to the next term of this court.

And afterwards, to wit, at the November term of said court aforesaid, on the 8th day of December, A. D. 1865, before the hon-
105 orable David McDonald, aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the said Douw D. Williamson, the trustee heretofore appointed by this court in the above-entitled cause, and on his motion the order of continuance heretofore made in this cause at this term is set aside, and he now files his petition, praying the advice and instruction of the court in the matter of the sale of the real estate and other property of said railroad company not used in operating its road, ordered to be sold by the former decree of this court rendered in said cause, and it appearing by said petition that, in the year 1852, said railroad company commenced the construction of a branch line of railroad from the town of Gosport to the city of Indianapolis, procured the right of way, and partly finished the grading and bridging of a part of said branch-road; that, in the year 1854, said work was suspended for want of funds, said company being unable to complete it; that said company is still unable to complete the same, or any part thereof; that said branch-road forms no part of the main line of said road, and is not used in operating it, and that it is not specially provided in said former decree by whom or in what manner such sale shall be made; and it appearing to the satisfaction of the court that said branch-road ought to be sold and the proceeds applied to the liquidation of the debts of said railroad company:

It is therefore ordered and decreed that Douw D. Williamson, as such trustee, be authorized and directed to sell the same, or such part or parts thereof as may be wholly or partially completed, at private sale, for the best price he can obtain, and to make a deed of conveyance to the purchaser or purchasers, to be attested by the seal of said company, conveying to such purchaser or purchasers all the right, title, interest, and franchises of said railroad company in and to the same, and that he apply the proceeds of all such sale toward the liquidation of the debts of the said railroad company, and that he make report of his proceedings herein to this court at its next term, together with such deed or deeds of conveyance, for the approval and confirmation of the court.

And this cause is continued.

And the above-mentioned petition is as follows, to wit:

To the honorable the judges of the circuit court of the United States for the district of Indiana, in chancery sitting:

106 Your petitioner, Douw D. Williamson, trustee of the Louisville, New Albany and Chicago Railroad, under the decree of said court rendered on the 23d of June, 1858, in the suit pending in said court, wherein said petitioner is complainant, and said Louisville, New Albany and Chicago Railroad Company and James Brooks are defendants, respectfully represents that, by virtue of his appointment as special trustee by said decree of this court rendered on the 23d day of June, 1858, he took possession of said railroad and appurtenances belonging to said railroad company, and is still continuing in the discharge of his duties as such trustee. That, since the rendition of said decree, said railroad company has changed its name and has assumed the name of the Louisville, New Albany and Chicago Railroad Company, instead of the name of the New Albany and Salem Railroad Company, by which it was formerly known.

That when your petitioner took possession of said railroad it was much out of repair, and in want of a large number of locomotives, cars, and other equipments, and required large expenditures in repairing its roadway, bridges, depots, and other necessary parts and fixtures, and in procuring rolling-stock and machinery necessary to its successful and profitable operation.

That said railroad has also been a very expensive one to operate, and, owing to its location and various causes beyond the control of your petitioner, for a great portion of the time since he took possession thereof, the receipts have been comparatively very small, and consequently the mortgage-debt due by said company for the greater part still remains unpaid.

The first-mortgage debt of the company is $2,325,000 of bonds, bearing eight per cent. interest, and $500,000, bearing ten per cent. interest. No part of this debt has yet been paid except $170,000 of bonds issued originally by the Crawfordsville and Wabash Railroad Company, and assumed by said New Albany and Salem Railroad Company. There is also a heavy delinquency for interest due on said debt, amounting to $1,080,000.

In the year 1852 said New Albany and Salem Railroad Company commenced the construction of a branch-line of railroad from the town of Gosport to the city of Indianapolis, procured the right of way and partly finished the grading and bridging of a part of said branch-road, expending on said work $92,172.26. In June, 1864, said work on

107 said branch-road was suspended for want of funds, said company being unable to complete it. Since that time no further work has been done thereon, and said company is still unable to complete the same or any part thereof. Said line of branch-road forms no part of the main line of said railroad as operated by your petitioner, and is not necessary to the operation thereof; in its present condition it is of no use whatever to said railroad as operated by your petitioner, and there is no probability that the original intention of constructing it as a branch-line can ever be carried out.

It is, therefore, for the manifest interest of said railroad company that said unfinished work, with the right of way and franchises thereunto appertaining, be sold, and the proceeds applied towards the liquidation of the mortgage-debts or interest thereon for which said road is liable.

In said decree of the 23d day of June, 1858, it is ordered that all the

real estate and other property of said railroad company not used in operating its road be sold, and the proceeds applied to the liquidation of its debts, but it is not specially provided by whom, or in what way, such sale shall be made, and your petitioner is in doubt whether, under the provisions of said decree, he is authorized to make sale of said branch-road or such part thereof as may be wholly or partially completed. He believes that if authorized so to do, he can now make sale of the same to advantage, and he prays the advice and directions of this court in the premises, and that he, or some commissioner to be appointed by the court, be authorized to sell said property at public or private sale as may be deemed most expedient, and that the proceeds be ordered to be applied to the liquidation of the debts of said railroad company, as the court shall direct.

And, as in duty bound, your petitioner will ever pray. &c.

D. D. WILLIAMSON, *Trustee*,
By THO'S L. SMITH AND M. C. KERR,
His Attorneys.

STATE OF INDIANA, *Tippecanoe County, ss:*

Douw D. Williamson, the above-named petitioner, makes oath and says that the facts stated in the above petition, so far as stated from his own knowledge, are true, and so far as stated from information derived from others, he believes them to be true.

D. D. WILLIAMSON.

108 Subscribed and sworn before me this 25th day of December, 1865.

[SEAL.] JOHN A. WILSTACH,
Notary Public.

[5-c't stamp.]

And afterwards, to wit, at the May term of said court, on the 17th day of May, A. D. 1866, before the honorable David Davis and the honorable David McDonald, judges as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Ordered by the court that the above-entitled cause be continued to the next term.

And afterwards, to wit, at the November term of said court, on the 27th day of December, A. D. 1866, before the honorable David McDonald, judge aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Ordered by the court that the above-entitled cause be continued to the next term of this court.

And afterwards, to wit, at the May term of said court, on the 18th day of June, A. D. 1867, before the honorable David McDonald, judge aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Ordered by the court that the above-entitled cause be continued.

And afterwards, to wit, at the November term, 1867, on the 28th day of January, A. D. 1868, in the court aforesaid, and before the judge last aforesaid, the following further proceeding was had in said cause, to wit:

Ordered by the court that the cause above named be continued until the next term of this court.

And afterwards, to wit, at the May term, 1868, on the 27th day of May, A. D. 1868, in the court aforesaid, and before the judge aforesaid, the following further proceeding was had in said cause, to wit:

Ordered by the court that the above-entitled cause be continued.

And afterwards, to wit, at the November term, 1868, on the 9th day of December, A. D. 1868. in the court aforesaid, and before the judge aforesaid, the following further proceeding was had in said cause, to wit:

Ordered by the court that this cause be continued.

109 And afterwards, to wit, at the May term, 1869, on the 28th day of June, A. D. 1869, in the court aforesaid, and before the judge aforesaid, the following further proceedings was had in said cause, to wit:

Ordered by the court that the above-entitled cause be continued.

And afterwards, to wit, at the term last above named, on the 6th day of July, A. D. 1869, in the court aforesaid, and before the judge aforesaid, the following further proceedings was had in said cause, to wit:

Now at this day comes Douw D. Williamson, trustee, &c., and files his report in this cause in the words following:

Douw D. Williamson, trustee heretofore appointed by the court to make sale of the real estate and other property of said railroad company not used in the operation of its road, heretofore ordered to be sold by the decree of this court, December 8th, 1865, would respectfully report that on the 15th day of August, 1867, he, as such trustee, and by virtue of said order of said court, did sell to Ambrose E. Burnside, at Providence, State of Rhode Island, the branch-line of said road, from the town of Gosport to the city of Indianapolis, including in said sale the right of way, grade, culverts, etc., of said branch-road at the price and consideration of five thousand dollars cash, and fifty shares of stock of the Indianapolis and Vincennes Railroad, that being the highest and best price he could obtain therefor; that he has received on said sale as follows, to wit, five thousand dollars cash and said fifty shares of stock, the same being full payment for said purchase; that on the 4th day of September, 1867, he, as such trustee, made, executed, and delivered to said Ambrose E. Burnside a quit-claim deed for said branch-railroad aforesaid, which said deed is now brought into court for the approval of the court.

All of which is respectfully submitted.

D. D. WILLIAMSON, *Trustee.*

STATE OF NEW YORK,
City and County of New York,
Southern District of New York, ss:

Personally appeared before me, Douw D. Williamson, who, being duly sworn, deposes and says that the foregoing report made by him as trustee is true.

D. D. WILLIAMSON, *Trustee.*

110 Subscribed and sworn to before me, this 8th day of February, 1869.

[SEAL.] EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

And afterwards, to wit, at the same term, on the 3d day of August, A. D. 1869, in the court aforesaid, and before the honorable judges thereof, the following entry was made, to wit:

Ordered by the court that all suits and proceedings of every nature depending in this court, and not specially continued, be, and the same are hereby, continued until the next general term of this court.

111 Be it remembered that in vacation of said court, on the 1st day of November, A. D. 1869, the following proceedings in the cause above entitled were had, to wit:

Now in vacation, on this 1st day of November, A. D. 1869, the same being a rule-day in chancery, comes John Savage Shaw, by Mr. Huff, his solicitor, and asks leave of the court to file his intervening petition herein, and accompanying papers, and deposits said papers in the office of the clerk.

And afterwards, to wit, at the November term of said court, before the honorable Walter Q. Gresham, judge of said court, the following further proceedings in the cause above entitled were had, to wit:

Now, at this day, comes John Savage Shaw, by James Hughes, esq., and Samuel Huff, esq., his solicitors, and upon leave of the court first had and obtained, files his petition and exhibits herein in the words and figures following, and also an affidavit showing the death of
112 Douw D. Williamson, who was the complainant and trustee in that cause; and upon the suggestion of said Williamson's death, moves the court for the substitution of Charles E. Bill, esq., as a complainant and trustee herein, in the place of said Williamson, deceased.

And at the same time comes George L. Schuyler, by Henry Crawford, esq., his solicitor, and appears herein in the capacity in which he is described in said petition, and resists said motion.

And the same having been heard and considered, and it appearing that said Charles E. Bill, of the city of New York, is nominated in the several deeds of trust set forth in the bill of complaint herein as the alternative trustee, in case of the failure of said Williamson; and it also appearing to the satisfaction of the court that said Williamson has departed this life, it is ordered that a copy of this entry be served upon said Charles E. Bill, requiring him to appear in this court on the first day of the next term thereof, and cause himself to be substituted as trustee and complainant herein. And it is made the duty of the clerk of this court to certify to said Charles E. Bill a copy of this order, and procure proof of service thereof with all convenient speed.

And afterwards, to wit, at the May term of said court, on the 3d day of May, A. D. 1870, before the honorable Thomas Drummond, judge of said court, the following further proceedings in the cause above entitled were had, to wit:

Comes now Charles E. Bill, the nominated alternative trustee in the several deeds of trust or mortgages described in the original and supplemental bills of complaint herein, by Chase & Wilstach, his solicitors, and enters his appearance herein, and is by the order of the court made and substituted complainant herein instead of the said Douw D. Wil-

liamson, deceased. And said Charles E. Bill now files his written motion to dismiss the original and supplemental bills herein. And comes John Savage Shaw, by James Hughes, and Huff and Langdon, his solicitors, and objects to the dismissal of said original and supplemental bills, and by order of the court the said John Savage Shaw has until the 21st day of May, 1870, in which to file affidavits in support of his said objections.

And afterwards, to wit, at the May term aforesaid of said court, on the 23d day of May, A. D. 1870, before the honorable David Davis, judge of said court, the following further proceedings in the cause above entitled were had, to wit:

113 Come now the parties by their respective solicitors, and by consent the rule entered in this cause, on the 3d day of May, is extended to the 25th instant.

And afterwards, to wit, at the May term aforesaid of said court, on the 25th day of May, before the honorable David Davis, judge of said court, the following further proceedings in the cause above entitled were had, to wit:

Come now the parties by their respective solicitors, and by consent the rule entered in this cause, on the 3d day of May, is extended to Saturday next.

And afterwards, to wit, at the May term aforesaid of said court, before the honorable David Davis, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now John Savage Shaw, by counsel, and files his affidavit and one printed exhibit, and thereon moves the court to discharge the rule heretofore entered to show cause why the bill herein should not be dismissed, and also for leave to file a cross-bill in this cause.

And the said complainant also appears, by counsel, to said motion, and by consent the hearing of the same is set down for Saturday next, at 9 o'clock a. m. But the complainant may show cause for further time.

And afterwards, to wit, at the May term aforesaid of said court, on the 4th day of June, before the honorable David Davis, judge of said court, the following further proceedings in the cause above entitled were had, to wit:

Comes now the complainant, by Mr. Chase, his solicitor, and files the affidavits of George L. Schuyler, George F. Talman, Madison Sloat, William H. Lewis, Henry Crawford, and H. A. Chase.

And afterwards, to wit, at the May term aforesaid of said court, on the 4th day of June, A. D., 1870, before the honorable David Davis, judge of said court, the following further proceedings in the cause above entitled were had, to wit:

Come now the parties, by their solicitors, and the court being sufficiently advised touching the motions pending herein, doth make the order following, to wit:

That the motion to dismiss this cause is overruled, and that the petitioner, John Savage Shaw, have leave to file any further pleadings in said cause, in conformity with the equity practice of this

114 court, that may be requisite to settle his rights in this behalf, and this cause is continued.

And afterwards, to wit, in vacation of said court, on the 29th day of August, A. D. 1870, the following further proceedings in the cause above entitled were had, to wit:

Now, at this day, comes John Savage Shaw, by his solicitors, James Hughes, esq., Messrs. McDonald & Roach, and Messrs. Huff and Langdon, and files his supplemental petition herein, and a certain exhibit therewith, marked I, which said petition and exhibit follow in the words, to wit:

To the judges of said court, in chancery sitting:

Your petitioner, John Savage Shaw, by leave of the court, brings this his petition before your honors. And he prays it may be regarded as a petition at the foot of the decree entered herein on the 16th day of December, 1858, and as supplemental to the matters hereinbefore exhibited. He respectfully shows to the court that he is a citizen of the State of New York, and that he is the holder and owner of one of the bonds issued by the defendant, The Louisville, New Albany and Chicago Railroad Company, of the series bearing date February 1st, 1855, for the payment of one thousand dollars, with interest-warrants attached thereto, a copy of which bond and of one of said interest-warrants is herewith filed, marked A, and made a part of this petition; that there are fifty-six interest-warrants attached to said bond of like character with the copy above set forth, only that they vary in time of payment as provided for in the mortgage executed to secure the same by the said railroad company by its then corporate name, The New Albany and Salem Railroad Company; that the same bond and interest-warrants remain wholly unpaid.

Your petitioner is also the holder and owner of one thousand and ninety shares of the capital stock of the said railroad company, which shares represent each the sum of fifty dollars, and were issued in lieu of bonds of the same series as the one above-herein described, which, with the interest-warrants attached to them, were surrendered to the said company to the full amount of the said shares at par, under the agreement embodied in the said decree of December 16th, 1858. And

115 your petitioner shows that, on the 23d day of June, 1858, a decree, by the consent and agreement of the parties then before the court in this cause, was entered, a copy of which is embodied in Exhibit I, herewith filed, and made a part of this petition; that in pursuance of said decree, on or about the 1st day of October, 1858, Douw D. Williamson, the trustee named in the several mortgages theretofore issued by the said railroad company, and the original complainant herein, took possession of all that part of the said company's railroad running from New Albany to Michigan City, in the State of Indiana, a distance of two hundred and eighty-eight miles, and the uncompleted branch of the said company's road extending from Gosport to Indianapolis, in said State, with all the fixtures, tools, machinery, rolling-stock, and property of every kind of the said railroad company to the full extent of the authority conferred by the said decree of June 23d, 1858, and at about the same time the said railroad company executed to said Williamson a certain instrument of writing reciting the said decree of June 23d, 1858, and confirming to him and his successors the powers and authority intended to be vested by the said last-named decree,

which instrument bears date October 6th, 1858, a copy of which is herewith filed, marked I, and made a part of this petition.

Your petitioner further shows that, after the said Williamson so took possession of the said railroad, and the other property covered by the said instrument of October 6th, 1858, he continued to hold, u e, and dispose of the same, with the income derived therefrom, until about the 1st of October, 1868, but he failed to render any account of the trust under which he held, used, and disposed of said road and property, or of the income so derived therefrom, to this court, while he so held it, except as to the disposition he had made of the Gosport branch of said road, the sale of which was authorized by a decree herein on the 8th day of November, 1865, and on the 6th day of July, 1869, the said Williamson filed in this court a paper purporting to be a report of the sale of that branch of the said railroad, upon which report no action has ever been had in this court. Your petitioner shows that, on or about the 1st day of October, 1868, the said Williamson, having still the possession of said railroad and property so committed to his charge under the decree of June 23d, 1858, delivered the same, or such parts thereof as remained at that time in his possession and under his control, to one James F. Joy, without any authority derived from this court, but at the instance of
116 the majority of the holders of the bonds then outstanding against the said railway company. And the said Joy continued to hold the said railroad and property, and to dispose of the same, and receive the income derived therefrom, from October 1st, 1868, until about the 21st day of June, 1869, when the same were passed into the hands of certain persons, to wit, George F. Talman, Moses Taylor, Frederick Schuchardt, James H. Banker, Edward Minturn, Charles P. Laverick, John Stewart, James F. Joy, George L. Schuyler, John Jacob Astor, William H. Bradford, Jonathan T. Wells, and Edward Jones, who were themselves holders, or so claimed to be, of a portion of the bonds of said railroad company and who, or some of whom, were, or claimed to be, the agents of other holders of such bonds, representing, as your petitioner is informed and believes, a large majority in amount of the bonds up to that time outstanding against the said railroad company, and at whose instance this very suit was instituted in the year 1857.

Your petitioner shows that under the arrangements embodied in the decree herein of December 16th, 1858, a large portion of the bonds of the said railway company, secured by the mortgages of November 3d, 1853, and February 1st, 1855, and of the income bonds secured by the mortgages of December 21st, 1856, were surrendered with the interest-warrants thereto annexed, and were converted into the stock of said company to the amount of the bonds and warrants so surrendered at par, but your petitioner is not sufficiently informed to be able to state to what amount such surrender was made; he believes, however, and he charges, that not exceeding the sum of one hundred thousand dollars, including interest, of the debts secured by the said mortgages of November 3d, 1853, February 1st, 1855, and December 21st, 1856, remained outstanding against said railroad company, on the 1st day of October, 1868, when the said road and property passed into the hands of the said James F. Joy, and that all the residue of the said last-named debt had before that time been converted into the stock of the said company.

Your petitioner is unable to state what amount remained outstanding of the principal and interest on account of the debts secured by the mortgages of February 8th, 1851, and February 14th, 1852, on the said 1st day of October, 1868, for from the 1st day of October, 1858, to the 1st day of October, 1868, a period of ten years, the entire busi-

117 ness of the said company's road was managed by the said Williamson, and the accounts were so kept as to make it difficult, if not impossible, to ascertain what, if any, income was derived by him from the earnings of the road applicable to the bond debt of the company. The stockholders residing at a distance from the office where those accounts were kept were left in ignorance as to the time at which a sufficient revenue had been derived from said property and its earnings to satisfy the objects of the trust created by the decree of June 23d, 1858, and until informed by the affidavit filed herein on the 4th day of June, 1870, on the motion of the present trustee complainant to dismiss the original and supplemental bill of complaint, your petitioner was ignorant as to whether that trust had been accomplished or not prior to the time said road and property passed into the hands of said James F. Joy.

Your petitioner shows that while said property remained in the hands of said Williamson large net revenues were derived from its earnings over and above the disbursments incident to the trust, but to what amount, and how it was applied, your petitioner has no sufficient information to enable him to state with any degree of certainty, and he believes that a fair account of the business transacted, and the earnings and incomes received, and the disbursements made by the said Williamson under his administration of the trusts committed to him by said decree of June 23d, 1858, cannot be had without a reference to a master of this court. He charges that, upon a fair accounting, there is a large surplus unaccounted for, as he believes, sufficient to satisfy a large portion of, if not the whole of the outstanding indebtedness of the said company at this time.

Your petitioner is unable, from want of knowledge of the facts, to state the amount of the income of the said railroad company, derived from the earnings of said road and from the property of the company since it passed into the hands of the said James F. Joy, and up to the present time, but he is informed that they amount to a large sum over and above all expenses incident to the running, repairs, and betterments of the said railroad, and that said surplus ought to be accounted for and applied, as far as necessary, to the liquidation of the debts against the company, and whatever may remain to dividends to the holders of the stock of the company.

Your petitioner further shows that about the time the said par-
118 ties who now hold possession of the said railroad and property seized upon the same, they were the holders of a large amount of the bonded debt of the said company, and represented others also holding a large amount of such debt, so that they and the persons they represented were the holders and owners of nearly the whole amount of the said bond-debt, and the said parties, for themselves and for those they so represented, converted the bonds held by them into the stock of the company, so that they became holders of such stock in lieu of the bonds of the company so held by them, and thereby reduced the bond-debt of the company, so far as the same is secured by the mortgages of February, 1851, and February, 1852, to less than one hundred thousand dollars, as your petitioner is informed and believes.

In thus converting the said bonds into stock, the holders thereof, without the consent of any of the other holders of the stock and bonds of the said company, organized themselves into a company, assuming corporate powers and claiming corporate franchises under the laws of the State of Indiana as the Louisville, New Albany & Chicago Railway Company, and under such assumed corporate powers and name have,

from about the 21st day of June, 1869, been holding, managing, and using the said railroad and property, and receiving the incomes thereof, and appropriating the same to their own use to the exclusion of the stockholders of the said company who became such by original subscription, and such as held stock in the right of those who originally subscribed the same, and to the like exclusion of all holders of the stock issued in lieu of the bonds secured by the mortgages of November 3d, 1853, February 1st, 1855, and December 21st, 1856.

And your petitioner shows that the parties who have thus attempted to usurp and hold said railroad and property, at the time they so seized upon the same not only represented a large majority in interest of the bonds secured by the mortgages of February 8th, 1851, and February 14th, 1852, but they also represented a large majority in amount of stock of the said Louisville, New Albany & Chicago Railroad Company, and thereby possessed the means of controlling the management of said company in its corporate powers, and of the trustee named in the said several mortgages; that the then acting trustee, Douw D. Williamson, the former complainant herein, had, for a long time before the said usurpers seized upon said road and property, been in his dotage, so much so that he was controlled and managed by the said usurping party, either directly or through agencies of their appointment, and was led by them to disregard the obligations of his trust under the said decree of June 23d, 1858, and to pass the property *thusly* committed to him as such trustee into the hands and control of the said usurping parties as though they alone had any interest therein. Having thus seized upon the said property, the said usurping party at once proclaimed themselves the exclusive owners thereof, and from that time to the present they have denied that your petitioner, and those standing in like relation with him to the subject-matters involved in this suit, who did not participate in said acts of usurpation, have any right to share in the said property, or in the management of the trusts involved in this suit, or in the administration of the affairs of the Louisville, New Albany & Chicago Railroad Company as a corporation. The said George F. Talman, Moses Taylor, Frederick Schuchart, James H. Banker, Edward Minturn, Charles P. Laverick, John Stewart, James F. Joy, George L. Schuyler, John Jacob Astor, William H. Bradford, Jonathan T. Wells, and Edward Jones, the usurping parties, who claim to have the direction and management of the affairs of the said company, are all of them non-residents of the State of Indiana and without the jurisdiction of this court, and one, Madison Sloat, a citizen of the State of Indiana, acting under the direction of the said usurping parties, is in the immediate superintendence of the said railroad and its operations from New Albany to Michigan City, and is and has been since the said road was so seized by the said usurpers in the receipt and management of the earnings and income of said road and property, holding himself accountable to the said usurping parties, and while said Sloat has thus been operating said road, large revenues have been derived therefrom and placed at the disposal of the said usurping parties without the jurisdiction of this court.

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Your petitioner is ignorant of the amount of revenues thus derived from said road and property by said Sloat, but he believes that more than one million of dollars in the aggregate have been earned by and otherwise derived from the said road and property since the seizure thereof by said usurping parties, of which no account whatever has been rendered to this court, or to any of the parties in interest, either as creditors or stockholders of said company, who have not participated

in the said fraudulent usurpation of the said railroad and property.

120 Your petitioner is ignorant as to the precise amount of the bonds secured by the said mortgages of February 8th, 1851, and February 14th, 1852, yet remaining outstanding and not converted into stock, but he believes that all said bonds so secured have been converted into the stock of the company, except about fifty thousand dollars thereof; and he charges that the said amount of fifty thousand dollars is all that now remains outstanding of the said bonds of 1851 and 1852.

Your petitioner is likewise ignorant as to what amount of the bonds secured by the said mortgages of 1853, 1855, and 1856 remain outstanding and not converted into stock under the decree of December 16th, 1858, but he is informed and believes that not more than the aggregate sum of fifty thousand dollars of these remain outstanding, so that your petitioner charges that if the remaining bonds of 1853, 1855, and 1856 should be held to be an indebtedness of the company, secured by the mortgages applicable thereto, the whole debt of the company, including those of 1851 and 1852 secured by the said several mortgages, does not exceed the sum of one hundred thousand dollars, and that, upon a fair accounting of earnings of the said road and property, after all proper disbursements should be allowed for, there is a sum on hand more than sufficient to pay the same off, and leave the entire road, with all the machinery, rolling-stock, fixtures, and other property, to the stockholders of the company, subject only to about fifty thousand dollars of debts in judgment, and a small amout in judgment on account of right of way, not yet paid off, not exceeding twenty thousand dollars.

Your petitioner charges that the parties who are usurping said property and the franchises of said company are claiming to have exclusive right to the same, and are denying that your petitioner and those who, like him, have not participated in the said acts of usurpation, have any right whatever, either as stockholders or creditors of said company, and claiming that all the rights of the original stockholders, and of those who became such by the conversion of their bonds under the decree of Dec. 16th, 1858, and of the bond creditors other than those of 1851 and 1852, are extinguished by the said acts of usurpation; and unless the said road and property shall be seized upon by the order of the court herein, and placed in the hands of a receiver of this court, all participation in the management, profits, and income thereof will be denied to your petitioner, and to all others standing in like rela-

121 tion who have not participated in said usurpation, and no part of the remaining indebtedness of the said company will ever be paid, but said entire property and its earnings and proceeds will be appropriated to the exclusive use of the said usurping parties.

Your petitioner shows that he has not in any manner consented to or participated in any of the said acts of usurpation, and that he had no knowledge thereof until after the said usurping parties had seized upon the said roads and property, to the exclusion of all others in interest.

Your petitioner further charges that since the death of the said Douw D. Williamson, the former trustee complainant herein, which occurred some time in August, 1869, the alternative trustee, Charles E. Bill, the complainant herein substituted under an order of this court made at November term, 1869, has been in collusion with the said usurping parties, claiming that they are the exclusive owners of the said railroad and property, and that your petitioner and all others in like relation are excluded from any participation in the matters involved in this suit,

and through the procurement of the said usurping party, the said Charles E. Bill, since he was so substituted as complainant herein, has attempted to avoid the further jurisdiction of this court over the matters involved in this suit, by peremptorily dismissing the same, over the objection of your petitioner for himself and for others standing in like relation, and your petitioner charges that the said Charles E. Bill is still in such collusion with the said usurping parties, and that unless your petitioner and those stand in like relation be permitted to stand for themselves as complainants herein, your petitioner, and all others in such like relation, will be left remediless.

Your petitioner further shows that that portion of the line of the railroad of the said Louisville, New Albany and Chicago Railroad Company, between Michigan City, in the said State of Indiana, and the east line of the State of Illinois, a distance of about thirty-eight miles, is not embraced in or covered by any of the mortgages of the said company mentioned and referred to in the original complaint herein. Said thirty-eight miles of said road is of great value; perhaps from its peculiar location and relation to the roads of other companies it is almost of equal value to the residue of the entire line of the said company's road. This portion of said road has never been operated directly by the officers and servants of the said company, but up to the time said
122 usurping parties seized the residue of said road was run in the interests of the Michigan Central Railroad Company, a corporation organized under the laws of the State of Michigan, although it was owned by and formed a part of the line of the road of the Louisville, New Albany and Chicago Railroad Company. About the time the said usurping parties seized upon that part of said road from New Albany to Michigan City, they entered into some arrangements by which that part from Michigan City to the east line of the State of Illinois was transferred to the exclusive possession of the said James F. Joy, as the agent and president of the Michigan Central Railroad Company, as your petitioner is informed, and from that time to the present the said thirty-eight miles of the said Louisville, New Albany and Chicago Railroad Company's road has been held and claimed by the parties to whom or for whose use it was so transferred, to the exclusion of the said last-named company; but how and for what amount, and what pretence the transfer has been made, your petitioner is ignorant. He charges, however, that the said thirty-eight miles of said railroad is still a part of the road of the said Louisville, New Albany and Chicago Railroad Company, and that your petitioner, as one of the stockholders of the said last-named company, and one of her creditors, is entitled to a share in the said thirty-eight miles of said road and its management.

Notwithstanding the transfer thereof so made, and that he, with all others standing in like relation, is entitled to a full and complete accounting respecting the said thirty-eight miles of said railroad, and to have the same by the decree of this court placed under the corporate management of the said last-named company, and inasmuch as the pretended transfer of the said thirty-eight miles of said railroad was made in the interests and by the consent of the said usurping parties, and as a part of the fraudulent device by which your petitioner and such as stand in like relation have been excluded from participation, that of right belongs to him and them, in the management and business of the said last-named company as a corporation, your petitioner for himself and in behalf of such as stand in such like relation, claims that the entire line of road of the said last-named company, including the said thirty-eight miles, ought to be seized under the authority of this ourt and placed in the hands of a receiver.

Your petitioner shows that, to enable the court to make a final
123 adjustment of the matters involved in this suit and settle and fix the rights of all the parties in interest herein, it will be necessary that an account be taken of the entire assets of the said Louisville, New Albany and Chicago Railroad Company, including the said thirty-eight miles of the said railroad, and all the earnings and incomes of the said company from whatever source derived, whether from the sale or use of the property thereof, from the time the said road and property were placed in the hands of the said Douw D. Williamson, as special trustee, under the said decree of June 23d, 1858, to the time of taking such accounts, including the time the said road was in the hands of the said Joy, and the whole period that has elapsed since it was so seized by the said usurping parties. Hence your petitioner, for himself and in behalf of all others standing in like relation with him to the matters involved in this suit, prays the court for an account to be taken herein as to the amount of the bonds secured by the said mortgage of February 8th, 1851, yet outstanding, and also as to the amount of this class of bonds surrendered and converted into stock of the said Louisville, New Albany & Chicago Railroad Company.

Further, that a like account be taken respecting the bonds secured by the said mortgage of Feb. 14th, 1852, so as to ascertain what amount thereof remains outstanding, and the amount of this class of bonds surrendered and converted into the stock of the company.

Further, that a like account be taken respecting each of the series of the said bonds secured by the mortgages of Nov. 3d, 1853, Feb. 1st, 1855, and Dec. 21st, 1856.

Further, that a like account be taken as to any and all indebtedness of the said Louisville, New Albany & Chicago Railroad Company, and the character of such indebtedness.

Further, that an account be taken of the entire assets of the said Louisville, New Albany & Chicago Railroad Company, including the entire line of the said company's road, and all other property of the company from the time the said Williamson took upon himself the trust embraced in the said decree of June 23d, 1858, and the income and proceeds in any wise derived therefrom.

Further, that an account be taken as to the entire amount of the capital stock of said Louisville, New Albany and Chicago Railroad Company, so that a pro rata division may be made amongst the several holders of such stock of whatever excess of moneys may be found
124 to belong to the said company after the payment of its liabilities, and that such division be decreed by the court.

Further, that a receiver be appointed by the court, and directed forthwith to take into his possession all the property covered by the several mortgages and the decree of June 23d, 1858, and of the proceeds and incomes derived therefrom since June 23d, 1858, as far as the same can be found, and manage and operate the said railroad under the direction of this court, and that such receiver, when appointed, be directed to take possession of the books of the said Louisville, New Albany and Chicago Railroad Company, with all the papers and vouchers thereof, and all the books, papers, and vouchers relating to, and in manner connected with, the trust under which said property was delivered to said Williamson, unless the said decree of June 23d, 1858, and all instruments, books, papers, and vouchers of any kind relating to said company's business to the time such possession may be required by such receiver.

Further, that such receiver be directed to receive into his possession,

and manage and control, under the order of this court, the said thirty-eight miles of the said railroad between Michigan City and the east line of the State of Illinois.

Further, that the matters and things herein charged and shown, and the relief herein prayed for by your petitioner, be taken as charged and shown and prayed for by all others standing in like relation with your petitioner, who may desire such relief, and who, during the pendency of this suit, may come into court for that purpose.

And further, that the court may grant unto your petitioner, and such as stand in like relation with him, such other and further relief in the premises as may be just and equitable.

JAMES HUGHES,
McDONALD & ROACH,
HUFF & LANGDON,
Solicitors for Petitioner.

STATE OF INDIANA,
Marion County, ss:

Before me, the undersigned, a notary public in and for said county and State, on this 27th day of August, 1870, personally appeared Gid-
125 eon Putnam, who, being by me duly sworn, on his oath says he is the acting agent of the petitioner, John Savage Shaw, in respect to the matters involved in the suit now pending in the circuit court of the United States for the district of Indiana, wherein Charles E. Bill, trustee, is complainant, and the Louisville, New Albany & Chicago Railroad Company and others are defendants; that the said Shaw is a non-resident of the State of Indiana, and a resident citizen of the State of New York; that said Shaw is at this time absent from the said district; that affiant has personal knowledge of the matters of fact stated in the foregoing petition, as far as the same are positively therein stated by the petitioner, and affiant says they are true as therein stated. And as to the matters of fact in the said petition stated as upon the information and belief of the said petitioner, affiant believes them to be true as therein stated.

GIDEON PUTNAM.

Subscribed and sworn to before me, this 27th day of August, 1870. Witness my hand and notarial seal.

[SEAL.] JONATHAN S. HARVEY,
Notary Public.

Here follows Exhibit I, above referred to:

This indenture, made this sixth day of October, 1858, by the New Albany and Salem Railroad Company of the first part, and Douw D. Williamson, of the City and State of New York, of the second part, witnesseth: that whereas said railroad company, by her deed dated February 8th, 1851, granted to said Williamson, as trustee, all that part of her railroad which lies between New Albany and Gosport, in the State of Indiana, with the appurtenances, to secure the payment of five hundred bonds of one thousand dollars each, made by said railroad company, bearing an interest of ten per cent. per annum, payable semi-annually in the city of New York, which deed is recorded in book H, page 146, of the record of deeds in the office of the recorder of Floyd County, in said State of Indiana, and is referred to for greater particularity and certainty; and said railroad company, by her deed dated February 14th, 1852, granted to said Williamson as trustee, all that part of her railroad which lies between said New Albany and Michigan City,

and between said Gosport and Indianapolis, made and to be made, with the appurtenances, to secure the payment of two thousand bonds
126 of one thousand dollars each, and six hundred and fifty bonds of five hundred dollars each, bearing an interest of eight per cent. per annum, payable semi-annually in the city of New York, which deed is recorded in book Y, page 203, of the record of deeds in the office of said recorder, and is referred to for greater particularity and certainty; and said railroad company, by deed dated November 3d, 1853, granted to said Williamson, as trustee, all the property last aforesaid, with the appurtenances, to secure the payment of one thousand bonds of one thousand dollars each, bearing an interest of seven per cent. per annum, payable semi-annually in the city of New York, which deed is recorded in mortgage-book No. 1, page 163, of the record of mortgages in the office of said recorder, and is referred to for greater particularity and certainty; and said railroad company, by her deed dated February 1st, 1855, granted to said Williamson, as trustee, all the property last aforesaid, with the appurtenances, to secure the payment of nine hundred bonds of one thousand dollars, one hundred and sixty bonds of five hundred dollars, and one hundred bonds of two hundred dollars each, bearing an interest of seven per cent. per annum, payable semi-annually at the city of New York, which deed is recorded in mortgage-book No. 1, page 409, of the record of mortgages in the office of said recorder, and is referred to for greater particularity and certainty; and said railroad company, by her deed dated December 21st, 1855, granted to said Williamson, as trustee, all her locomotives, passenger-cars, freight-cars, baggage-cars, hand-cars of whatever kind; all her engines, lathes, machinery, tools, and materials of whatever kind, to secure the payment of eight hundred bonds of five hundred dollars, and one thousand bonds of one hundred dollars each, bearing an interest of ten per cent. per annum, payable semi-annually in the city of New York, which deed is recorded in mortgage-book No. 2, page 25, of the record of mortgages in the office of said recorder, and is referred to for greater particularity and certainty; and whereas, some of the interest on said bonds being due and unpaid, said Williamson, as such trustee, on the day of , 1857, filed his bill of complaint in chancery, in the circuit court of the United States for the district of Indiana, against said railroad company and other persons, praying as is set forth in the bill which is still on file in the court, referred to for further particularity and certainty; and at the May term of said court, in the year 1858,
127 to wit, on the 23d day of June, 1858, a decree was rendered by said court in said suit, in the words and figures following, to wit:

"DOUW D. WILLIAMSON, TRUSTEE, &c.,
vs.
"THE NEW ALBANY AND SALEM R. R. Co., and others.

"Be it remembered, that on this 23d day of June, 1858, come the parties, and this cause coming on to be heard, on the petition of said complainant, and it appearing that it is for the interest of all parties concerned in the trust set forth in the bill of complaint in this cause, and by the consent of the plaintiff and defendants, on the joint motion of the counsel of said complainant and the counsel of said defendant, it is hereby ordered that the net proceeds arising from the business and traffic of said road, after paying the necessary expenses of operating and carrying on the business of the same, and for supplies, repairs of its road, cars, bridges,

buildings, fixtures, and machinery, and keeping the same and its rolling-stock good and in repair, be applied to the payment of the confidential indebtedness of said company, mentioned in Schedule A, hereto annexed, in these words and figures, to wit: A schedule of that part of the floating debt of said company which is secured by the directors and officers of said company, and by others at their request, viz:

"Amount due at sundry banks in Louisville, Ky.	$50,132 20
"Amount due at sundry banks in New Albany	7,436 00
"Amount due at sundry banks in Michigan City	1,800 00
"Amount due at sundry banks in Lafayette	1,000 00
"Amount due at sundry banks in New York	17,807 62
"Total	$78,175 82

"The above debts are from time to time renewable or changed in individual amounts and other papers given, and while the aggregate debt remains the same, the institutions or individuals to whom the same may be payable, and the endorsers of the same, are changed as the business and necessity of the road may require.

'STATE of INDIANA,
"*Floyd County, ss:*

"George Lyman, secretary of the New Albany and Salem Railroad Company, being sworn, says that the floating debt of said company, which is secured by the directors and officers of said company, 128 and by others at their request, amounted, on the 21st day of June, 1858, to the sum of seventy-eight thousand one hundred and seventy dollars and eighty-two cents.

"GEORGE LYMAN.

"Sworn and subscribed to before me.

"W. W. TUTTLE,
"*Notary Public.*

"Not exceeding the sum of seventy-five thousand dollars, and the payment of operators, men, and laborers, and necessary expenses in repairs of damages (by the recent fire and flood, to said railroad) on said railroad, not exceeding the further sum of one hundred and twenty-five thousand dollars, until the same, and in order to enable said trustee more effectually to carry out his trust, and the sooner and more effectually to avail himself of the benefits of the trust-estate, and the more effectually to preserve the same, the said trustee is hereby authorized and empowered, in his discretion, to borrow a sum or sums, not exceeding two hundred thousand dollars, on such terms as to him, and rate of interest, as he shall deem best, for the sole purpose of paying off said confidential indebtedness, and other debts referred to. And the said trustee is hereby authorized and required to repay such sums and interest as he may, in his discretion, borrow, under the power hereby given, out of the first net proceeds of said trust-estate, from whatever source the same may arise. And said trustee is hereby expressly authorized to secure the repayment of such sum or sums as he may borrow, as aforesaid, in such forms as he may deem best, upon all the net proceeds of the said road, and upon said trust-estate, and prior to any and all other liens upon the same. And it is hereby further ordered by the consent of said complainant and defendant, and that in order to enable said

trustee to effect said loans and to effectually secure the same, that possession of said road, and all its fixtures, engines, cars, rolling-stock, machinery, tools and property, both real and personal, and all appurtenances of the same, be delivered to said trustee, to be held by him until the said sums above referred to be fully repaid, and whenever such sums shall be repaid in full, said trustee shall surrender, on their request in writing, to the directors of said company, the said road, fixtures, engines, cars, and all of its said properties, both real and personal; and that in the mean time the said road shall be run and operated, through and by such directors, officers, and agents, and employés and laborers as the said trustee shall deem best, the said trustee being liable personally only for a faithful discharge of his trust in
129 carrying out the same according to his best judgment. And in case of the death of the said trustee, the same powers and duties hereby conferred upon said Douw D. Williamson, as trustee, shall be had and exercised by his lawful successor in said trust, provided that such a portion of such net proceeds may be appropriated by said trustee, to the purchase of such necessary engines and cars, and for the repairs of damages by the recent fire and flood, to said railroad, as he may deem best for the interest of said trust-estate; and provided that such real estate and other property as may not be necessary for the uses of said road may be applied in settlement of the indebtedness of said company; and provided that the said railroad company shall not be required to surrender up the possession of said railroad and its appurtenances as above mentioned until the said confidential indebtedness above mentioned is paid or arranged to an amount not exceeding seventy-five thousand dollars.

"I, Horace Bassett, clerk of said U. S. circuit court for the district of Indiana, do hereby certify the above and foregoing to be a true and correct copy of the record now in my office.

"In testimony whereof I have hereunto set my hand and affixed the seal of said court, on this 24th day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

[SEAL.] "H. BASSETT, *Clerk.*"

The debt last aforesaid having been paid or arranged by the said Williamson, as trustee under said decree, which is above recited in words at length:

Wherefore, in consideration of the matters aforesaid, and of one dollar paid by said Williamson, said railroad company does hereby transfer and deliver to said Williamson, as trustee under said decree, above recited in words at length, the possession of the said railroad between New Albany and Michigan City, and between Gosport and Indianapolis, including the track and right of way, and all the fixtures of the railroad, all the depots, station-houses, and machine-shops, all her locomotives, passenger, freight, baggage, and hand cars, and rolling-stock of every kind, all her engines, machinery, and tools of every kind, all her iron rails, cross-ties, wood, and materials of whatever kind, provided for said railroad, and all her goods and chattels of every kind; and the said railroad company do hereby also grant and convey to said Douw D.
130 Williamson all her lands, tenements, and hereditaments described in the schedule hereto annexed, marked A, and sealed with the seal of said railroad company, to have and to hold the possession of all and singular of said property by said Williamson as a trustee, for the purposes and trusts described in the decree above recited, in words at length, in all respects as fully and completely as said railroad company

ought to make, and as said Williamson ought to have the same, by virtue of and pursuant to the decree above recited in words at length, and to have and to hold all the said lands described in the Schedule A, above referred to, to him, his heirs and assigns aforesaid, forever, with full power to sell and convey the same in fee, for the purpose of the trust in the above described decree contained, and when the purposes of the trust for which the possession of said property is so given to said Williamson shall have been, or ought to have been, fully accomplished, he shall redeliver all, or so much of said property as shall then remain to said railroad company, or her assignees. In witness whereof said railroad company has caused this indenture to be signed by the president, and sealed by her corporate seal, the day and year first aforesaid, at the city of New Albany and State of Indiana.

[L. S.] JAMES BROOKS, *President.*

GEORGE LYMAN, *Secretary.*

Schedule of lands covered by the foregoing deed of trust, viz:

All those parts of the following-described tracts or parcels of lands which are situated north of the New Albany and Salem Railroad, being lot numbered three in Shandy's plat of survey number forty-two, in the Illinois grant, in Floyd County, Indiana. Beginning at a stake 48 degrees 50 minutes west, and eleven chains and thirty-one links from R. Downey's corner at the Charleston road, and running thence north 36 degrees west, thirteen chains and fifty links to the middle of Falling Run; thence up said run to the corner of number two in said plat, belonging, in 1838, to R. Downey; thence south 38 degrees ten chains and fifty links to a stake corner of said Downey's lot; and thence south 48 degrees 50 minutes west, three chains and seventy-seven links to the beginning; also part of one and two in Shandy's plat of part of said survey, number forty-two, beginning at a sugar-tree, the northeast corner of lot number one, thence running with the line of said lot and the Charleston road, south 10¼ degrees east, one chain and fifty-one links,
131 thence south 53 degrees west, nine chains and thirty-six links; thence north 32⅛ degrees west, five chains and ninety-two links to the middle of Falling Run; thence up the same with the meanders thereof north 67 degrees east, two chains and thirty-four links; thence north 86 degrees two chains and seventy-seven links, to the beginning, except above one acre heretofore sold to the city of New Albany by William Kirkwood. The lands intended to be covered by this conveyance being those purchased of Kent and Willard, July 14th, 1852, which lie on the north side of the railroad-track; also the following property in Washington County, Indiana, viz: A part of the northwest quarter of section twenty, in town. two north of range four east, and bounded as follows: Beginning at the line dividing sections seventeen and twenty, in the middle of the creek running through the town of Salem; running thence west eighty-one poles to the corner of said quarter-section; thence north one hundred and fifty-six poles; thence north 43 degrees east, sixteen poles; thence running in the middle of the channel of the said creek, with all its meandering to the beginning, containing thirty-four acres, more or less, excepting so much as William Rodman sold to Burr Bradley; also excepting one-fourth of an acre adjoining the grave-yard on the south side, in a strip beginning at the southeast corner of said grave-yard, and running west as far as the present grave-yard extends. Also the following premises in White and Stark Counties, Indiana, to wit: The southeast quarter of the northeast quarter, and the east half

of the southeast quarter, and the southwest quarter of the southeast quarter of section twelve, (12,) town. twenty-eight, (28,) range two (2) west, containing one hundred and sixty acres, more or less; also the following in the county of Stark, to wit: The west half of the northeast quarter, and the west half of the northwest quarter of section eighteen, (18,) town. thirty-two, (32,) range two (2) west, and the southeast quarter of section twenty-three, (23,) town. thirty-two, (32,) range four (4) west, and the east half of the northeast quarter of section thirteen, (13,) town. thirty-two, (32,) range three (3) west, and all that part of east half of southeast half of southeast quarter of section twelve, (12,) town. thirty-two, (32,) range three (3) west, which lies south of the outlet of Cedar Lake, together with all privileges granted to Jacob Riplogle by a deed from Abram Welct and Elizabeth Welct, supposed to contain ten acres. Also the following lands in Tippecanoe County, Indiana,
132 to wit: The south fraction of the northwest quarter, and the west fraction of the northeast quarter of section thirty-one, (31,) township twenty-three (23) north, of range four (4) west, except what is contained in the following, to wit: Beginning at the southeast corner of said west fraction of the northeast quarter of section thirty-one, (31,) in town. twenty-three (23) north, of range four (4) west, running thence twenty-four $\frac{28}{100}$ poles to a stake in the center of the county road, leading from Lafayette to Harter's Mills, in the direction of Crawfordsville; thence north with said county road seventy-three $\frac{52}{100}$ poles to a stake in the center of the plank-road; thence north 29½ degrees east, eight $\frac{24}{100}$ poles to a stake in the center of said plank-road; thence east fifteen $\frac{56}{100}$ poles to the east line of said fraction; thence south with said east line one hundred and fifteen (115) poles to the place of beginning, containing sixteen $\frac{65}{100}$ acres. Also the following lands in Jasper and White Counties, Indiana:

In Jasper County, the southeast quarter of section twenty-five, (25,) in town twenty-eight, (28,) range six (6) west, containing 160 acres; east half, southwest fourth, section twenty-five, (25,) town. twenty-eight, (28,) range six (6) west, containing 80 acres; east half, northeast fourth, section twenty-five, (25,) town. twenty-eight, (28,) range six (6) west, containing 80 acres; south half southwest fractional quarter, section thirty (30,) town. twenty-eight, (28,) range five (5) west, containing sixty-nine $\frac{23}{100}$ acres; west half northwest quarter, section twenty-four, (24,) town. twenty-eight, (28,) range six (6) west, 80 acres; southwest quarter of southwest quarter, section thirteen, (13,) town. twenty-eight, (28,) range six (6) west, 40 acres; southeast fourth, section fourteen, (14,) town. twenty-eight, (28,) range six (6) west, 40 acres. In White County, west half northwest fractional fourth, section thirty-one, (31,) town. twenty-eight, (28,) range five (5) west, $69\frac{57}{100}$ acres.

[S. L.] JAMES BROOKS, *President.*

GEORGE LYMAN, *Secretary.*

STATE OF INDIANA, *Floyd County, ss:*

Before the undersigned, a notary public in and for the said county aforesaid, this day personally appeared James Brooks, president
133 of the New Albany and Salem Railroad Company, and acknowledged that he executed the foregoing conveyance for the uses and purposes therein set forth.

Witness my hand and notarial seal at New Albany, Indiana, this sixth day of October, 1858.

[L. S.] W. W. TUTTLE, *Notary Public.*

A true record; recorded October 31st, 1858, at 9 o'clock a. m.
JOSEPH YUNDT, *Recorder.*

This indenture, made this 6th day of October, 1868, by Jesse J. Brown, of the city of New Albany and State of Indiana, of the first part, and Douw D. Williamson, of the city and State of New York, of the second part, witnesses: That whereas the New Albany and Salem Railroad Company, by her deed, dated on the 2d of September, 1857, conveyed certain lands to said Brown, which are particularly described in the printed schedule hereto annexed, to be held by said Brown in trust to secure the payment of certain debts mentioned in said deed; and where as said Williamson, as a trustee, under a decree rendered by the circuit court of the United States for the district of Indiana, at its May term, 1858, in a suit in chancery, wherein said Williamson was plaintiff and said railroad company and others were defendants, has fully paid said debts; therefore, in consideration of the matters aforesaid, and of one dollar paid to him, said Brown quit claims to said Williamson, as such trustee, the lands particularly described in said printed schedule, hereto annexed, being the same land conveyed by said railroad company to said Brown as aforesaid, to have and to hold by said Williamson in trust for the purposes particularly mentioned in said decree.

Witness the hand and seal of said Jesse J. Brown, on the day and at the city first aforesaid.

[SEAL.] JESSE J. BROWN.

STATE OF INDIANA, *Floyd County, ss:*

Before me, the undersigned, a notary public of said county, this day personally appeared Jesse J. Brown, who acknowledged that he executed the foregoing conveyance for the uses and purposes therein set forth.

Witness my hand and notarial seal at New Albany, Indiana, this 7th day of October, 1858.

[L. S.] W. W. TUTTLE, *Notary Public.*

134 Schedule of lands covered by the foregoing deed.

All those parts of the following-described tracts or parcels of land which are situated north of the New Albany and Salem Railroad, being lot number three in Shandy's plat of survey number forty-two, in the Illinois grant, in Floyd County, Indiana, beginning at a stake 48 degrees 50 minutes west, and eleven chains and thirty-one links from R. Downey's corner, at the Charleston road, and running thence north 36 degrees, west thirteen chains and fifty links to the middle of Falling Run; thence up said run to the corner of number two in said plat, belonging in 1838 to R. Downey; thence south 33 degrees ten chains and fifty links to a stake, corner of said Downey's lot, and thence south 48 degrees and fifty minutes west, three chains and seventy-seven links to the beginning; also a part of one and two in Shandy's plat of part of said survey number forty-two, beginning at a sugar-tree, the northeast corner of lot number one; thence running with the line of said lot and the Charleston road south 10½ degrees east, one chain and fifty-one links; thence fifty-eight degrees west, nine chains and thirty-six links; thence north 32½ degrees west, five chains and ninety-two links to the middle of Falling Run; thence up the same with the meanders thereof north 67 degrees east, two chains and thirty-four links; thence north 86 degrees, two chains and seventy-seven links to the beginning, except above one

acre, heretofore sold to the city of New Albany by W'm Kirkwood, the lands intended to be covered by this conveyance being those purchased of Kent and Willard, July 14th, 1852, which lie on the north side of the railroad-track; also the following property in Washington County, Indiana, viz, a part of the northwest quarter of section twenty, in town. two north, of range four east, and bounded as follows: beginning at the line dividing sections seventeen and twenty, in the middle of the creek running through the town of Salem; running thence west eighty-one poles to the corner of said quarter-section; thence south one hundred and forty-six poles; thence north forty-three degrees east, sixteen poles; thence running in the middle of the channel of said creek, with all its meanderings, to the beginning, containing thirty-four acres, more or less, excepting so much as William Rodman sold to Burr Bradley; also excepting one-fourth of an acre adjoining the grave-yard on the south side, in a strip beginning at the southeast of said grave-yard, and running west as far as the present grave-yard extends; also the follow-

135 ing premises in White County and Stark County, Indiana, to wit: the southeast quarter of the northeast quarter, and the east half of the southeast quarter, and the southwest quarter of the southeast quarter of section twelve, (12,) town. twenty-eight, (28,) range two (2) west, containing one hundred and sixty acres, more or less; also the following in the county of Starke, to wit: the west half of the northeast quarter, and the west half of the northwest quarter of section eighteen, (18,) town. thirty-two, (32,) range two (2) west; and the southeast quarter of section twenty-three, (23,) town. thirty-two, (32,) range (4) west; and the east half of the northeast quarter of section thirteen, (13,) town. thirty-two, (32,) range three (3) west; and all that part of east half of southeast quarter-section twelve, (12,) town. thirty-two, (32,) range three (3) west, which lies south of the outlet of Cedar Lake, together with all the privileges granted to Jacob Replogle by a deed from Abram Welst and Elizabeth Welst, supposed to contain ten acres. Also the following lands in Tippecanoe County, Indiana, to wit: the south fraction of the northwest quarter, and the west fraction of the northeast quarter of section thirty-one, (31,) township twenty-three (23) north, of range four (4) west, except what is contained in the following, to wit: beginning at the southeast corner of said west fraction of the northeast quarter of section thirty-one, (31,) in town twenty-three (23) north, of range four (4) west, running thence twenty-four and $\frac{28}{100}$ poles to a stake in the center of the county road leading from Lafayette to Harters' Mills, in the direction of Crawfordsville; thence north with said county road seventy-three and $\frac{52}{100}$ poles to a stake in the center of the plank-road leading from Lafayette to Crawfordsville; thence north 8 degrees east, thirty-four and $\frac{36}{100}$ poles to a stake in the center of the said plank-road; thence north 29$\frac{1}{2}$ degrees east, eight and $\frac{23}{160}$ poles to a stake in the center of said plank-road; thence east fifteen and $\frac{56}{100}$ poles to the east line of said fraction; thence south with said east line one hundred and fifteen (115) poles to the place of beginning, containing sixteen and $\frac{65}{100}$ acres. Also the following lands in Jasper and White Counties, Indiana: the southeast quarter of section twenty-five, (25,) town. twenty-eight, (28,) range six (6) west, containing 160 acres; the east half of the southwest quarter of section twenty-five, (25,) town. twenty-eight, (28,) range six (6) west, containing 80 acres; the east half of the northeast half of

136 section twenty-five, (25,) town. twenty-eight, (28,) range six (6) west, containing 80 acres; the south half of the southwest fractional quarter of section thirty, (30,) town. twenty-eight, (28,) range five (5) west, containing 69$\frac{25}{100}$ acres; the west half of the northwest quarter

of section twenty-four, (24,) town. twenty-eight, (28,) range six (6) west, containing 80 acres; the southwest quarter of the southwest quarter of section thirteen, (13,) town. twenty-eight, (28,) range six (6) west, containing 40 acres; and the southeast quarter of the southeast quarter of section fourteen, (14,) town. twenty-eight, (28,) range six (6) west, containing 40 acres.

In White County, the north half of the northwest fractional quarter-section thirty one, (31,) town. twenty-eight, (28,) range five (5) west, containing $69\frac{37}{100}$ acres.

A true record; recorded October 21st, 1858, at 9 o'clock a. m.

JOSEPH YUNDT, *Recorder.*

And afterwards, to wit, in vacation of said court, on the 5th day of September, 1870, the following further proceedings in the above-entitled cause were had, to wit:

Now at this day comes John Savage Shaw, petitioner as aforesaid, by his solicitors, whose supplemental petition was filed in this court on the 29th day of August, 1870, and files and enters his motion for the appointment of a receiver, and for a reference of this cause to the master in chancery of said court for an account; and also filing a certain notice of said motion, with proof of the service thereof upon Messrs. Chase and Wilstach, solicitors of said Charles E. Bill, and also a certain other notice of the same motion, with the proof of the service thereof upon the same counsel, and also upon E. H. Waldron, acting superintendent of said railroad company.

And afterwards, to wit, in vacation of said court, on the 9th day of September, 1870, the following further proceedings in the above-entitled cause were had, to wit:

Now comes Charles E. Bill, the complainant, by counsel, and also comes John Savage Shaw, by counsel; whereupon, by consent of said parties, it is ordered that all further affidavits to be filed on behalf of said Shaw in support of his petition, shall be filed on or before the 8th instant; and that any affidavit to be filed on behalf of the respondents to said petition, by way of defence to the same, shall be filed on
137 or before the 24th instant; and that any affidavits on behalf of said Shaw, by way of reply, shall be filed at and before the hearing.

And the further hearing of the cause is continued until the 7th day of November next.

And afterwards, to wit, in vacation of said court, on the 22d day of October, 1870, the following further proceedings in the above-entitled cause were had, to wit:

Now comes the respondent, by its solicitors, and files herein the affidavit of E. H. Waldron.

And afterwards, to wit, in vacation of said court, on the 26th day of October, 1870, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, by counsel, and files the affidavit of George F. Talman, Moses Taylor, Edward Minturn, Charles P. Leverick, and John Stewart.

And afterwards, to wit, at the November term of said court, on the 9th day of November, 1870, before the honorable Walter Q. Gresham, one of the judges of said court, the following further proceedings in said cause were had, to wit:

Comes John S. Shaw by his solicitors, and, on motion, the hearing of the motion for a receiver and an account herein is set for Thursday, the 17th day of November, 1870. And now at this time the said John S. Shaw files in open court a written undertaking of his sureties for the costs herein, as follows, to wit:

And afterwards, to wit, at the November term of said court, on the 10th day of November, 1870, before the honorable Walter Q. Gresham, judge as aforesaid, of said court, the following further proceedings in said cause were had, to wit:

Comes now John S. Shaw, the petitioner herein, and files the affidavit of George Lyman.

And afterwards, to wit, at the November term of said court, on the 17th day of November, 1870, before the honorable Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in said cause were had, to wit:

Comes now the New Albany and Salem Railroad Company, by Messrs. Hendricks, Hord and Hendricks, its solicitors, and enters a special appearance in this cause, and files its motion in writing, praying the court to dismiss the petition of John Savage Shaw in this behalf, in the words and figures following:

And the complainant files the affidavit of James F. Joy.

138 And afterwards, to wit, at the November term of said court, on the 18th day of November, 1870, before the honorable Thomas Drummond, one of the judges of said court, the following further proceedings in said cause were had, to wit:

Come now the parties, by their respective solicitors, and the respondents to the petition of John Savage Shaw, now file the affidavit of Hiram W. Chase, and the motions of John Savage Shaw, made herein for the appointing of a receiver of the said railroad, and for the taking an account, coming on to be heard, the evidence is read, and argument having been heard in part, the matter is continued until to-morrow for the further hearing of argument of counsel.

And afterwards, to wit, at the November term of said court, on the 19th day of November, 1870, before the honorable Thomas Drummond, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by their respective solicitors, and further argument herein is heard by the court.

And afterwards, to wit, at the November term of said court, on the 21st day of November, 1870, before the honorable Thomas Drummond, judge as aforesaid of said court, the following further proceedings in the above-entitled caase were had, to wit:

Come now the parties by their respective solicitors, and further argument herein is heard by the court.

And afterwards, to wit, at the November term of said court, on the 22d day of November, 1870, before the honorable Thomas Drummond,

judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by their respective solicitors, and, the argument of counsel having been concluded, the motions aforesaid are taken under advisement.

And afterwards, to wit. at the November term of said court, on the 29th day of November, 1870, before the honorable Thomas Drummond, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

And it appearing to the satisfaction of the court that all the parties in interest have been duly notified of the pendency of this petition and motion, and that they are duly represented by counsel at the hearing of the same; and it appearing to the satisfaction of the court
139 that the Louisville, New Albany and Chicago Railroad, and all its franchises and appurtenances, were, by a decree of this court, now appearing of record, placed in the hands of one Douw D. Williamson, as special trustee appointed by this court, in trust for the uses and benefits in said decree named; and it further appearing to the court that the said railroad, with its franchises and appurtenances, are wrongfully held at this time by other parties, in violation of the jurisdiction of this court, and the trust reposed in the hands of the said Douw D. Williamson; and it further appearing to the court that said Douw D. Williamson has never fully reported or accounted to this court in the matter of his said trust for its action therein; and that the said Douw D. Williamson departed this life prior to the filing of this petition, without having accomplished his trust, and that the petitioner Shaw, and all others standing in like relation, have a standing in this court to maintain their rights and interests in the said Louisville, New Albany and Chicago Railroad Company, as they may in future be adjudicated and established. It appearing further to the court that the original cause commenced by said Douw D. Williamson in this court, in the year eighteen hundred and fifty-seven, and in which a decree was rendered by agreement in the year eighteen hundred and fifty-eight, is still pending in this court, and that the said Louisville, New Albany and Chicago Railroad, and its franchises and appurtenances, which were then placed, by order of this court, in the hands of said special trustee, are still within the jurisdiction and custody of this court, but have been seized upon, and are now held by persons without authority from this court, and without right; and it further appearing to the court to be necessary and proper, in order to execute and accomplish the trust aforesaid, and that a full accounting of said trust matters may be had in this court, and that all parties in interest in said railroad property, and in pending cause may have an opportunity to have their legal rights, their equities and priorities, adjusted and decreed by this court, that a receiver should be appointed for that purpose:

It is, therefore, considered and adjudged by the court that upon the showing of the petition, and upon the affidavits, judgments, decrees, and the evidence introduced upon the hearing of this motion, the said motion of the petitioner for the appointment of a receiver of the property, rights, credits, and franchises of the Louisville, New Albany and Chicago Railroad Company be, and the same is now, granted in
140 the manner and under the stipulations hereinafter set out. And the said receiver is authorized and required by the court to take into possession and control, as the officer of this court, and the same to hold and administer until discharged by the further order of this court, in this action, all and singular the property of the said Louisville, New

Albany and Chicago Railroad Company, consisting of a line of railroad running from New Albany, in the county of Floyd, through the counties of Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, and La Porte, to Michigan City; the said line of road being of the length of 288 miles, or thereabouts; including also the right of way and land occupied thereby, the superstructure and tracts thereupon, depot grounds and buildings, machine-shops, water-tanks, wood-sheds, bridges, culverts, fences, switches, iron, engines, cars, machinery, wood, tools, materials of all and every kind whatever, affixed or appurtenant to the said line of railroad aforesaid, and the rights, privileges, and franchises to operate, maintain, and control the same, under the original charter of the railroad company, and the several amendments thereto; and also the said receiver is further empowered to take into his possession all and singular the real and personal property of all and every kind, character, and description whatsoever, whether held in possession or remainder, not embraced in the description of said line of railroad and its appurtenances, and all and singular the notes, accounts, and choses in action, to which the said railroad company is in any way entitled in law or in equity. And the said receiver is also required and authorized to take into his possession and control all of the books of record and accounts, and all papers belonging to the said railroad company, and used for the purpose of stating the business of said corporation, all and singular of which property, credits, and franchises are to be held by the said receiver, pending this litigation, who shall, respecting the said property, credits, and franchises, obey such orders and directions as he may from time to time receive from this court in relation to his said trust; and shall further account for and pay or deliver over, as he may be thereto directed by the court, all the moneys, property, and effects of the company which shall come into his hands as such receiver.

And the said Louisville, New Albany and Chicago Railroad Company, and all and every of its officers, agents, or employés, including its
141 president, directors, secretary, superintendent, agents, engineers, conductors, or other servants, and all persons and parties claiming to be, or claiming to represent and to hold under what is claimed to be a corporation by the name and style of the Louisville, New Albany & Chicago Railway Company, and any and all their supposed officers, agents, or employés, including the president, directors, secretary, superintendent, agents, engineers, conductors, or other servants, and all persons claiming to be receiver or receivers of said property, credits, and franchises, or claiming to be trustee or trustees of any mortgage or mortgages given by the said Louisville, New Albany and Chicago Railroad Company, or by said New Albany & Salem Railroad Company, to any person whomsoever, or their employés; and all bond holders of said Louisville, New Albany & Chicago Railroad Company, and all purchasers of said road under any sale or pretended sale of the said railroad property and franchises under any decree, judgment, or order of any other court whatsoever, or the employés of such; and all and every person having now in their or his possession or control, any part of the said line of railroad or its appurtenances, more particularly hereinbefore described, or any part of its real or personal property, rights, choses in action, money or books of account, shall each and every of them forthwith, upon the request or demand of the receiver, or his agents or attorneys, disclose and deliver over to said receiver, all and every part of the property of said company, or its choses in action, in their possession or within their power, or under their control, or in their possession, within the power or under

the control of either of them; and it is further ordered that in case the said railroad company, or any of the officers, attorneys, agents, or employés, or any person in possession or control of any part of the property of the said railroad company, shall, notwithstanding this order and the demand of the said receiver, or his agent or attorney, refuse or neglect to deliver up the possession and control of such part of the property of said railroad company as may be in his or their possession or control, thereupon, an affidavit of the said receiver, or his agent or attorney, being filed in this court disclosing such facts, and the name of the person or persons so refusing to deliver possession of the property of the said railroad company, the clerk of this court shall at once issue an attachment, under the seal of this court, against such person or persons, directed to the marshal of this court and district, which shall be
142 returnable to the next term of this court, bailable in the sum of one thousand dollars, to answer to this court for a contempt; and the said receiver is further empowered in the case of any such refusal to deliver up possession of any of the property of the said railroad company, and upon his filing an affidavit disclosing such facts, to sue out of this court a writ of assistance, signed by the clerk and sealed with the seal of this court, and directed to the marshal of this court, commanding such marshal to forthwith put the said receiver into possession of such part of the property of the said railroad company as may be wrongfully withheld from him. And it is further ordered that, until the further order and direction of this court in the premises, the receiver shall be, and is hereby, authorized and empowered to have and to hold all and singular the real and personal and mixed property of the said railroad company, and all the rights, credits, and franchises in which it has any interest whatever, free and clear from the claim, occupancy, or interposition of any other person whatsoever, and to maintain, operate, and control the line of railroad from New Albany to Michigan City, under and according to the original charter of said corporation, and the amendments thereto, and to receive all and singular the rents, tolls, and income which may accrue from the operation of the said line of railroad; and to that end, and for the purpose of carrying on the usual business of said line of railroad, in receiving and transporting passengers, freight, express goods, and mails of the United States, the receiver shall have power and authority to appoint and employ any and all such attorneys, clerks, agents, superintendents, conductors, engineers, and other employés, as in his judgment may be necessary for the convenient and proper management of said property entrusted to him, and the due and legal execution of his said trust, and to stipulate with each and every of said agents, clerks, superintendents, conductors, engineers, and other employés, for the payment to them severally, out of the funds which may be paid into his hands as receiver, of such reasonable compensation as may be agreed upon by said receiver, and the said attorney, agent, or employé; and the receiver shall, in the discharge of his said trust, have the authority to give to any such attorney, agent, or employee, an appointment in writing, specifying the duties and powers of the said agent or employee, the length of his term of service under such receiver, and the compensation agreed upon.

143 And the said receiver shall have full right and authority to accept from any such agent or employé a bond signed by such agent or employé, with sureties as may be satisfactory to such receiver, conditioned that such agent or employé will faithfully perform his duties as such agent or employé, and fully account for and pay over to the receiver all moneys which may come into his hands as such agent or em-

ployé; and the said receiver shall have full authority at any time and summarily to discontinue the service, or suspend any or all of the superintendents, agents, or employés by him appointed, and to select and place others in their stead; and said receiver shall have full power and authority, by or through such agents or employés, and in such manner as may by him be deemed most advantageous to his trust-estate, to use and employ the said line of railroad, and the engines, cars, machinery, and property connected therewith, and appurtenances thereto, in as full and complete a manner in every respect as the said railroad company, under the said charter and the laws of Indiana, had the power and authority to do; and to that end the said receiver shall have power to make contracts for the transportation of passengers and freight, express-goods, and mails, and to fix the rate of the carriage of the same, and to make running arrangements with such other railroads as connect with the said Louisville, New Albany and Chicago Railroad Company, and as the last-named company have been in the habit of having running arrangements with, as in the judgment of said receiver may be most advantageous for the interest of the property herewith intrusted to him; and after taking possession of the said property of the said railroad corporation, the said receiver shall have the exclusive power and authority, by himself and his duly-constituted agents, to manage, hold, and enjoy the said property, and each and every part thereof, and to receive, receipt for, and hold, under the order of the court, all and singular the tolls, rents, and incomes that may hereafter accrue by reason of the operation of said railroad, and all the moneys that may be paid into his hands as receiver, in consequence of any debt now due and owing to the said railroad company, or that he may receive by reason of the sale of any property of said company hereafter ordered to be sold.

And the said receiver is further authorized to proceed in such manner and at such time as he may deem expedient to collect all and
144 singular the notes, accounts, choses in action of every kind, which may now be justly due and owing to the said Louisville, New Albany and Chicago Railroad Company, to prosecute all suits now pending in behalf of said company, and if the said receiver shall in any case deem it expedient to effect a compromise with any debtor of the said corporation, he shall have full power to do so; and out of the moneys which may come into the hands of the said receiver, by reason of the operation of the said railroad, the collection of debts, or the sale of property, the said receiver is hereby fully authorized, without any special order of the court as to the particular demand, to pay and satisfy the following classes of claims and expenses:

1st. The necessary current expenses of carrying out the duties of his trust, including wages of all the operators, agents, attorneys, and officers employed by the said receiver in operating the said line of railroad, or in and about the execution of his trust, the purchase-money for all such engines, cars, ties, wood, iron, machinery, tools, and materials which are necessary in the judgment of the receiver for the convenient and proper use and management of said road, all of which necessary supplies and repairs and renewals the receiver is specially authorized hereby to contract for and purchase, to the end that the said road may be kept in an efficient state.

2d. All the legal taxes and assessments, county, township, State and Federal, which may now exist against the property of the said railroad company, or may hereafter be assessed and levied upon the same, or may arise by virtue of the business and receipts of said company, and all other legal costs and expenses which may arise out of litigation be-

gun or defended by the said receiver in the necessary discharge of his duties.

3d. All liabilities now due from said railroad company, or which may hereafter be from time incurred by reason of animals killed by engines or cars upon the line of said road; and the said receiver is hereby authorized to settle all dues for full and necessary stores and supplies and materials used in repairs and betterments of the said road, and all moneys due to agents, clerks, artizans, and laborers, which may have been rendered or furnished within the three months next preceding the entry of this decree; and to settle and adjust all balances due to connecting lines of roads which may have accrued within six months preceding the entry of this decree, and compromise any and all such
145 claims upon such terms as he may deem most expedient. And the said receiver is further authorized to appear in and defend all suits which may be pending at the date of his appointment against the said Louisville, New Albany and Chicago Railroad Company in any court, or for any cause whatever, in all respects as fully as the said corporation itself could appear and defend. And the said receiver is further empowered, in case of emergency, to bring all such suits and proceedings in courts of proper jurisdiction, as may be by him thought necessary to preserve and defend the property and trusts in his possession, in any such case reporting his action to the court at its succeeding term.

And the said receiver is hereby instructed to open and keep proper books of account, showing the operation of his trust, and at each regular term of this court succeeding the present shall present and file in this court his accounts-current, stating the receipts by him as receiver, and the payments by him made; and as to the said receiver, this action is continued, with liberty to him to apply to this court by petition at any time for such further instructions in relation to his said trust, as he may from time to time desire. And he is hereby required to make a complete and true inventory of the said railroad property, and all its appurtenances of every kind and description, and of all its rights and credits, and file the same in this court; and that he render to this court, under oath, monthly reports of the earnings and disbursements for and on behalf of said road.

And to enable the court to make a final adjustment of the matters involved in this suit, John D. Howland, esq., is appointed a special master in chancery, to take the accounts, and, as such, he is directed to take an account of the entire property of the said Louisville, New Albany and Chicago Railroad Company, covered by the decree herein of June 23d, 1858, and under said decree delivered into the hands of the late Douw D. Williamson, and of all the earnings of the said road, and of the moneys derived from the said property in any manner, from the time the said Williamson assumed the trusts under said decree of June 23d, 1858, to the time of taking such account; and also to take an account of all expenditures and disbursements made respecting the said property, and the trusts aforesaid during the same period; also an account of the amount of bonds now outstanding against said company, of the several
146 series of February 8th, 1851, February 14th, 1852, November 2d, 1853, February 1st, 1855, and December 21st, 1856, with the interest now due and unpaid thereon; also to take an account of all other liabilities of the said company, and the nature thereof; also an account of the entire assets of the said company, including its road, and all its other property; and of the property covered by each of the mortgages executed by the company to secure the said several series of bonds; also an account of the capital stock of said company, discriminating between

the original subscriptions to said capital stock and the stock issued under the agreement embodied in the decree of December 16th, 1858; and the said master is directed to report to this court as to the said several matters of account as often and as speedily as the same can be ascertained and taken. And the said master is hereby empowered to bring before him such persons and papers as may be necessary for the due examination of the said several matters of account.

And afterwards, to wit, at the November term of said court, on the 1st day of December, 1870, before the Hon. Walter Q. Gresham, one of the judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by their respective solicitors, and the court being sufficiently advised that George H. Chapman is a proper and suitable person to be appointed receiver, it is by the court ordered that said George H. Chapman be, and he is hereby, appointed receiver of the property, franchises, rights, and credits of the Louisville, New Albany, & Chicago Railroad Company, upon taking and filing in this court his oath to faithfully perform the duties of his said trust and his undertaking in the sum of one hundred thousand dollars, with surety to the approval of this court.

And now comes Laura W. Shaw, Laura H. Shaw, Frank E. Shaw, Gideon Shaw, Helen Shaw, James E. Emerson, (administrator of Charles B. Emerson,) Augusta J. Emerson, (administratrix of Edward B. Emerson,) Blanche B. Babcock and Myron H. Babcock, her husband, Gideon Putnam and Sarah T. Putnam, his wife, Henry W. Shaw, and Avery Williams, and file their petition to be admitted as parties, and to share with John Savage Shaw in the relief prayed for by him in his petition heretofore filed in the above-entitled cause.

147 And thereupon the said receiver takes and files the oath required, and files his bond in the penalty aforesaid, with surety to the satisfaction of the court.

And afterwards, to wit, at the November term of said court, on the 9th day of November, 1870, before the Hon. Walter Q. Gresham, judge, as aforesaid, of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the Louisville, New Albany & Chicago Railroad Company, by Hendricks, Hord & Hendricks, its solicitors, and files its petition in writing for and appeal herein to the Supreme Court of the United States, and for a supersedeas, in the words and figures following: and it also files its bond for an appeal herein, in the penalty of one hundred thousand dollars, with Hiram W. Chase, Jesse F. Brown, and Washington C. De Pauw, sureties, which bond is in the words and figures following:

Which said bond is approved by the Hon. Walter Q. Gresham, judge of the district court of the United States for the district of Indiana.

And at the same time comes the Louisville, New Albany & Chicago Railway Company, George F. Tallman, Moses Taylor, Frederick Schuchardt, James H. Banker, Edward Minturn, Charles Leverick, John Stewart, James F. Joy, George L. Schuyler, John Jacob Astor, William H. Bradford, and Jonathan T. Wells, and file their petition in writing for an appeal in the penalty of one hundred thousand dollars, with Hiram W. Chase, J. W. Meeker, Jesse T. Brown, and Washington C. De Pauw, sureties, which said bond is in the words following, to wit:

Which said bond is approved by the Hon. Walter Q. Gresham, judge of the district court of the United States for the district of Indiana.

And afterwards, to wit, at the November term of said court, on the 12th day of December, 1870, before the Hon. Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the appellants herein, and file in the office of the clerk of this court, certain notices herein, with acknowledgement of service made thereon by the counsel of the petitioner, John S. Shaw, of their intention to apply for the approval of their appeal-bonds, and also for a supersedeas. And said notices are in the words and figures following, to wit:

And at the same time they filed in said clerk's office the written
148 memorandum following, which is written under each of said petitions for appeal and supersedeas:

"DEC. 10, 1870.—An appeal is allowed for the purpose of enabling the party praying an appeal to present the question to the supreme court whether it is such a final decree as warrants an appeal under the law, and authorizes a supersedeas.

"I approve the bond.

"THOMAS DRUMMOND."

And afterwards, to wit, at the November term of said court, on the 14th day of December, 1870, before the Hon. Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Upon the affidavit heretofore filed in this cause by George H. Chapman, the receiver herein, and upon his motion, it is ordered that a rule be served upon William H. Lewis and James F. Joy, that they show cause in this court, on or before the 24th day of the present month, why writs of attachment should not be issued against them for an alleged contempt of the authority of this court on the part of said Lewis in claiming and pretending that, as the treasurer of said railroad company, he was acting as the agent of said Joy, and in refusing to surrender to said receiver any and all moneys in his hands, or standing to his credit, or under his control as such treasurer, and in disobeying the decree of this court of the 29th day of November, 1870, after the same had fully come to his knowledge, and on the part of said Joy, in having advised, counseled, and encouraged the said Lewis so to refuse, and so to disobey the decree aforesaid. It is further ordered that a copy of this rule be served on said Lewis and Joy by the marshal of this district.

And afterwards, to wit, at the November term of said court, on the 16th day of December, 1870, before the Hon. Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above entitled cause were had, to wit:

Comes now George H. Chapman, esq., the receiver heretofore appointed in this cause, and files his second affidavit herein.

And afterward, to wit, at the November term of said court, on the 29th day of December, 1870, before Hon. Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by counsel, and files the affidavits
149 of W. H. Lewis, M. Sloat, and W. W. Walsh, which are in the words and figures following, to wit:

And afterward, to wit, at the November term of said court, on the 30th day of November, 1870, before the Hon. Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

At this day comes George H. Chapman, the receiver heretofore appointed in this case, and moves for writs of attachment against William H. Lewis and James F. Joy, and for a writ of assistance to make perfect and complete his possession of all the property of whatsoever kind that he is required to hold and possess under the decree of this court of the 29th day of November last. And the affidavit of said receiver heretofore filed in this behalf having been read, as also the affidavits of said Lewis, of Madison Sloat, and Worth W. Walsh in opposition to said motion, having been read, and counsel for the respective parties having been heard, it is found by the court that said receiver ought forthwith to be placed in the full possession and exclusive control of all the property aforesaid; and that by the act of George L. Schuyler, the president of the Louisville, New Albany and Chicago Railway Company, and his subordinates, they then being in actual possession, and having control of said property, he was so placed in possession on the second day of December instant, but that by the act of said Lewis, the secretary, and said Sloat, the superintendent of said railway company, the said receiver has been ousted of his possession, and prevented from executing the decree of this court.

And it is further found by the court that said William H. Lewis and James F. Joy, have severally committed a contempt of the authority of this court by their disobedience to its decree and process.

And the court doth order that further proceedings touching said contempt be suspended to await the further action of the court.

And it is further ordered that the clerk of this court do issue a writ of assistance herein, under the seal of this court, directed to the marshal of this district, appending thereto a duly-certified copy of the said decree of November 29, 1870, and deliver the same to the marshal, whose duty it shall be forthwith to execute said writ by placing the property described in said decree into the hands of the said receiver, and to make due and prompt return of his doings in this behalf.

150 And afterward, to wit, in vacation of said court, on the 22d day of February, 1871, the following further proceedings in the above-entitled cause were had, to wit:

Comes now George H. Chapman, the receiver in this case, and files his petition duly verified, praying authority to sell six (6) small locomotive-engines, with (11) eleven-inch cylinder, 24-inch by 26-inch stroke, of Norris make; and said application being supported by sufficient affidavits, it is the opinion of the court that the prayer thereof ought to be granted.

It is therefore ordered that said receiver do sell the property aforesaid, on the best terms in his power, and that he do report any sale or sales thereof he may make to this court for its approval.

And afterward, to wit, at the November term of said court, on the 10th day of March, 1871, before the Hon. Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now George H. Chapman, esq., receiver herein, and files an invoice of the personal property of said railroad company, which is in the words and figures following, to wit:

And afterward, to wit, at the November term of said court, on the 14th day of March, 1871, before the Hon. Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come the parties, and, by consent, the master heretofore appointed herein, on the 28th day of November, 1870, is directed to proceed at once with the duties imposed upon him by said order of reference. And the question of costs is reserved for the further consideration of the court on filing affidavits touching the said matter on or before Saturday, March 11th, 1871, on which day the question of costs will come up for discussion in open court.

And afterwards, to wit, at the November term of said court, on the 15th day of March, 1871, before the honorable Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now George H. Chapman, esq., the receiver herein, and files his separate reports for the months of December, 1870, and January, 1871, with exhibits thereto attached, which are in the words and figures following, to wit:

And afterwards, to wit, on the same day and year, and at the term last aforesaid, before the honorable judge aforesaid, the follow-
151 ing further proceedings in the above-entitled cause were had, to wit:

The complainant, Charles E. Bill, now comes, by Mr. Crawford, and Messrs. Hendricks, Hord and Hendricks, his solicitors, and files his petition and an affidavit thereto attached, in the words following, to wit:

And the hearing of said petition is set down for Thursday, the 30th day of March instant, upon notice of such hearing to be given by the petitioner to the counsel of John Savage Shaw, a reasonable time prior thereto.

And afterwards, to wit, at the November term of said court, on the 30th day of March, 1870, before the honorable Thomas Drummond and the honorable Walter Q. Gresham, judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now John Savage Shaw, by counsel, and files his affidavit herein, in the words and figures following, to wit:

And afterwards, to wit, at the November term of said court, on the 31st day of March, 1871, before the honorable Thomas Drummond, judge as aforesaid of the said court, the following further proceedings in the above-entitled cause were had, to wit:

On the reading of the petition of Charles E. Bill herein, filed on the fifteenth day of March, 1871, and of the record entries in the cause, and the affidavit of John Savage Shaw, and on the argument of counsel, Mr. T. A. Hendricks and Mr. Henry Crawford appearing for the petitioner, and Messrs. Huff, McDonald, and Hughes for John Savage Shaw, it is ordered and adjudged by the court that the prayer of said petition be, and the same is hereby, denied. And the motion of said petitioner founded thereon is overruled, and said petition dismissed with the costs.

And now in open court, Mr. Henry Crawford, of counsel for the Louisville, New Albany and Chicago Railroad Company, the Louisville, New Albany and Chicago Railway Company, George F. Tallman, Moses

Taylor, Frederick Schuchardt, James H. Banker, Edward Minturn, Charles Leverick, John Steward, James F. Joy, George L. Schuyler, John Jacob Astor, William H. Bradford, and Jonathan Wells, abandon the appeal heretofore prayed and taken to the Supreme Court of the United States from the order of this court made appointing a receiver, and ordering an account in this cause.

152 And afterwards, to wit, at the May term of said court, on the 16th day of May, 1871, before the honorable Thomas Drummond and the honorable Walter Q. Gresham, judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now J. D. Howland, the master heretofore appointed in this cause, and files his report herein, in the words and figures following, to wit:

The master to whom this cause was referred under the decree of the 30th November, 1870, begs leave to report that, after notice to the counsel on either side, the hearing of the reference began at the judges' room in the court-house at Indianapolis, Monday, April 3, 1871, and was by consent adjourned until the next day at 9 a. m., at the same place, when J. E. McDonald, esq., appeared on behalf of the parties to the petition, and H. W. Chase, esq., on behalf of the respondents thereto; whereupon George Lyman and William Foster were produced by the petitioners and duly sworn and examined.

And their evidence on five pages is hereto attached and identified by the master's attestation, and the signatures of the witnesses respectively.

The receiver, who had been served with a subpœna duces tecum, appeared, but without the books; and upon his affidavit showing the inconvenience of their removal from the company's office, by consent of parties, the further hearing was adjourned to the office at New Albany, at 10 o'clock of April 12th, 1871.

The master attended at the time and place agreed upon. None of the parties appeared, and no evidence of any kind was or could have been taken.

And the present master respectfully asks the court to relieve him from any further duties in this behalf.

All of which is submitted.

J. D. HOWLAND, *Master in Chancery.*

To hon. judges United States circuit court:

(Here follows the evidence above referred to.)

For the petitioner, John Savage Shaw, Mr. GEORGE LYMAN was produced and sworn, and gave evidence as follows:

I was connected with the New Albany & Salem, and Louisville, New Albany & Chicago Railroad Company, as secretary, from the
153 spring of 1848 to the spring of 1867. Accounts were kept of the different kinds of rolling-stock belonging to the company, and of the time of its purchase. This applies to rolling-stock and machinery. Up to the time of my service as secretary, accounts were kept that showed the capital stock of the corporation, as well that which was originally created as that which was created under the decree of the court, the circuit court of the United States. The books also showed the receipts and expenditures of the company.

The account of the rolling-stock will be found, in its aggregate, in the general ledger. The details appear in the cash-book and books of original entry. The capital stock accounts are shown in the aggregate in the

general ledger, and in their details in the several stock-ledgers, of which there are some four or five. The receipts and expenditures appear in the same way, in their aggregate, in the general ledger, and in detail in the books of original entry. To the best of the witness's belief, the books remain in the usual depository, at the office at New Albany.

Further deposition of Mr. Lyman continued until Wednesday 12th, at the office of the company at New Albany, notice being given to counsel present representing both parties.

Attest:

J. D. HOWLAND, *Master.*

WILLIAM FOSTER, having been produced for the petitioner, and sworn, deposed as follows:

I commenced in June, 1852, and continued some time in the fall of 1859, in the service of the New Albany & Salem Railroad Company, afterwards known as the Louisville, New Albany & Chicago Railroad Company. As station-agent at Lafayette for five years, and general agent and assistant superintendent the balance of the *the* time. I really began as manager of the Crawfordsville and Wabash Railroad Company, which was in a few weeks after merged in the New Albany & Salem Railroad Company, from which period I continued as first above stated. By virtue of this merger, or in pursuance of it, a farm near Lafayette of about 137 acres, known as the Stockton farm, on which was situate the depot-building of the Crawfordsville & Wabash Railroad Company, passed from the latter company to the New Albany & Salem Railroad Company.

While I was in charge of Lafayette the reports of accounts were made to the office at New Albany. I made my returns in that way.
154 For a part of the time the accounts for the northern end of the road were made to Michigan City, but, subsequently, all were made to New Albany. A little more than a year of the last portion of my time with the company, Mr. Douw D. Williamson was in possession of the road as special trustee.

In the year 1859 I bought of Mr. Williamson, as such trustee, what was called the Jake Merkle farm, lying in Jasper and White Counties, Indiana, containing 618 acres. We estimated the land at about $4,000. That was a fair price for the land at that time. I was then the lessee and owner of fixtures in a grain warehouse of the New Albany & Salem Railroad Company, at Lafayette. I surrendered my interest in this property to the company, at a valuation for my lease and fixtures of $1,500, and for $2,500 I made to Mr. Williamson, as trustee, a mortgage on the land with notes. The notes were transferred by Mr. Williamson to Mr. David A. Noble, the president and manager of the New Albany & Salem Railroad Company under Mr. Williamson's direction. He still holds the notes. They are wholly unpaid. I merely know that Mr. Noble claims to be the owner of the notes. He makes claim to them as his individual property.

Cross-examined:

I have a claim for set-off against the notes for moneys paid for taxes, unpaid at the time of the sale of the land to me, and which the company should have paid. I do not remember the amount. The notes had five years to run and have stood on six per cent. interest from date.

WILLIAM FOSTER.

Attest: J. D. HOWLAND, *Master.*

And the master asks an allowance of $50 for his expenses herein.

J. D. HOWLAND.

And said master is, upon his own request, discharged from further service in this case.

And afterward, to wit, on the same day and year, and at the term last aforesaid, before the hon. judges aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by counsel, and the report of the master herein approved, and he is allowed $50 for his services and expenses. And thereupon the court appoints Hilary Clay, esq., the master herein to execute the reference heretofore made; and he is instructed to make report first upon so much of said reference as relates to the stocks and bonds mentioned therein; said sum of $50 to be paid by the receiver herein.

155 And afterward, to wit, at the May term of said court, on the 24th day of May, 1871, before the Hon. Thomas Drummond and the Hon. Walter P. Gresham, judges as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the receiver, and upon his sworn petition, filed in these words, (here insert,) it is ordered that he do have full and complete authority and discretion in regard to the payment of all legal taxes and assessments made by the authority of any city or town against the property of said railroad corporation, as is given him by the decree in this cause made and entered November 28, 1870, in regard to county, township, State, and Federal taxes, and assessments.

And upon his further sworn petition, now filed in these words, (here insert,) it is further ordered that said receiver have authority to make contracts for and to fence the said railroad in his charge at such points as, in his judgment, may prove a substantial advantage to the property in his hands as such receiver.

And afterward, to wit, at the May term of said court, on the second day of June, 1871, before the Hon. Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by his solicitors, and files his amended supplemental bill herein in the words and figures following, to wit:

To the judge of said court in chancery sitting:

Complaining showeth unto your honors, your orator, Charles E. Bill, a citizen and resident of the city and State of New York, that the said Louisville, New Albany and Chicago Railroad Company, defendant, is a corporation organized in the year 1849, under the laws of the State of Indiana, and originally called the New Albany and Salem Railroad Company; during the years from 1849 to 1855, inclusive, the said corporation built and constructed a line of railroad from the city of New Albany northwardly to Michigan City, of the length of 288 miles about, and also located and did considerable work on a branch-road running from Gosport, in the county of Owen, to the city of Indianapolis, in the county of Marion.

In pursuance of the powers given to it by its charter, the said corporation, (then known by the corporate name and appellation of the New Albany and Salem Railroad Company,) for the purpose of borrow-
156 ing money to construct its line of road and furnish proper equipments therefor, issued five series of bonds, and secured the said issue of five different trust-mortgages upon all and singular its property

and franchises, executed to one Douw D. Williamson, and respectively dated as follows, viz: February 8, 1851; February 14, 1852; November 3, 1853; February 1, 1855, and December 21, 1856.

That in the year 1857 the said New Albany and Salem Railroad Company failed and neglected to pay the semi-annual interest upon its bonds as aforesaid, and in consequence of said default the conditions of said mortgages became broken, and the said trustee Williamson, then in full life, but since deceased, at the August rules of this court, instituted the present suit, praying the foreclosure of said five mortgages, and the sale of said entire property of said defendant corporation, to satisfy the several sums so secured and covenanted to be paid by said several mortgages, and for such other and further relief as the court might decree. And the said co'poration defendant was duly served with process of subpœna, and appeared by counsel, to the said bill of complaint exhibited by said Williamson. And your orator further shows that, on the 23d day of June, 1858, a certain decree was enrolled herein upon the petition of said original complainant, Williamson, and upon consent of said corporation defendant, whereby, among other things, it was decreed and adjudged that all and singular the real and personal property of the said New Albany and Salem Railroad Company shall be placed in the possession and under the control of said Williamson, and to be operated by him for the purpose of realizing out of the first net proceeds and revenues of said railroad the sum of two hundred thousand dollars, which the said Williamson was, by said decree, instructed to borrow.

And on the 10th day of December, 1858, a certain other decree called herein a final decree, was enrolled in this cause, upon the petition of said Williamson, and with the consent of said corporation, and divers of its shareholders and creditors, whereby it was provided, among other things, that the said three mortgages, dated November 3d, 1853, February 1st, 1855, and December 1st, 1856, should be cancelled, and all liens created by virtue thereof upon any part of the property of said railroad company should be extinguished, and the holders of all bonds issued under any of the said three mortgages should be perpetually enjoined and restrained from ever setting up the said bonds and mortgages
157 as liens upon said property, or any part thereof; and it was further decreed and adjudged that the only mortgage-liens upon said railroad company and property should be the said mortgages of February 8th, 1851, and February 14th, 1852, and that all and singular the rents, issues, and incomes arising thenceforward from the operation of said railroad should be applied, first to the payment of principal and interest of the special loan of two hundred thousand dollars, ordered by said decree of June 23d, 1858, and the payment of a mortgage of one hundred and seventy-five thousand dollars, issued by the Crawfordsville & Wabash Railroad Company, and thereafter shall be applied to the payment of the principal and interest of the two issues of bonds secured by the said trust-mortgages of February 8th, 1851, and February 14th, 1852, and which matters will more fully and at large appear by the said decree now remaining of record in this court, which your orator prays may be referred to as a part of this supplemental bill.

And on the 10th day of November, 1859, the name of said corporation was duly changed to the Louisville, New Albany & Chicago Railroad Company. And on the 17th day of December, 1861, the said Williams filed his certain supplemental bill herein, setting forth that the said loan of two hundred thousand dollars had not been paid; that the one hundred and seventy-five thousand dollar mortgage executed by the

Crawfordsville & Wabash Railroad Company was unprovided for, and that no interest whatever had been paid on the mortgage-debt of the New Albany & Salem Railroad Company since the filing of the original bill herein, and praying for an order of sale of said railroad and property, and other relief.

And on August 27th, 1870, one John Savage Shaw filed his petition herein, and on the 28th day of November, 1870, a certain decree was enrolled herein, whereby it was decreed and adjudged that this action has been pending since the filing of the original bill herein, and a receiver was also appointed to take possession of said railroad and appurtenances, all of which will more fully and at large appear by reference to said supplemental bill, petition, and decree. And your orator further shows that, in said two mortgages, dated February 8th, 1851, and February 14th, 1852, your orator is named, designated, and appointed an alternative trustee, in the name and stead of the said Williamson, in case of the death of the latter, and your orator further shows, in
158 this connection, that the said Williamson departed this life some time about August, 1869, and that by the order of this court, duly enrolled herein, your orator was substituted as complainant herein in place of said Williamson.

In October, 1858, the said Williamson, in accordance with the terms and authority of the said decree of June 23d, 1858, and a further deed of surrender, executed, on October 6th, 1858, by the said railroad company, defendant, under its corporate seal, (a copy of which is now upon the records of this court, herein, marked Exhibit I,) took possession of the entire line of railroad, embraced in the said five mortgages, together with all the fixtures, tools, machinery, rolling-stock, and property of every kind, for the purpose of carrying out the orders and provisions of said decree, and paying out of the net proceeds coming into his hands from the operation of said road, the sum of $200,000, which, under the order of this court, the one of June 23d, 1858, the said Williamson had borrowed on the security and pledge of the revenues and income of said property.

And at the said date, in October, 1858, the said Williamson was a citizen and resident of the city and State of New York, and, not being desirous to personally supervise the immediate operation of said line of railroad so as aforesaid delivered to him, under the said decree and deed of surrender, he duly authorized one David A. Noble, who was then and there the president of the New Albany & Salem Railroad Company, to be the general manager thereof, to carry out and affectuate the purposes of said decree of June 23d, 1858, and repay the said $200,000 so borrowed thereunder; and the said Noble, as such a president and manager, had personal and immediate supervision of the affairs of the said road and its operation and accounts from October, 1858, continuously, until about .

During all such period, and from thence continuously, until the death of said Williamson, the business receipts and disbursements of the said line of railroad were, by the agents of said Williamson, entered in and spread at large upon the proper books of account of the road corporation, kept at its principal office in the city of New Albany, Indiana; and for all the disbursement made from 1858 to 1868, inclusive, the officers in charge of the operation of said railroad and under authority of said Noble and said Williamson, took due and proper vouchers, and
159 preserved the same on file at the said principal office of said corporation, and other than the said books, amounts, and vouchers so kept, taken, and preserved as aforesaid, the said Williamson kept no

accounts or vouchers, and your orator has no means of stating the business of said line of railroad, except by reference thereto.

And your orator further shows to your honor, by way of supplement, that, since the filing of the original bill herein, and since the filing of the supplemental bill by said Williamson, in 1861, the said mortgage of $175,000, executed by the Crawfordsville & Wabash Railroad Company, and mentioned in said decree, has been fully paid and satisfied, together with all interest thereupon.

And your orator further shows to the court, by way of supplement, that the earnings of the said New Albany and Salem Railroad, during the years from and after the year 1858, were so small in amount that the said Williamson was unable to pay off the said sum of $200,000 so borrowed by him under order of the court, out of the net earnings of said railroad, remaining after payment of operating expenses and necessary repairs and renewals, until April, 1864, when the said loan and all interest thereupon was fully repaid to the parties from whom the said sum had been borrowed, and the date and amount of such final payment was duly and regularly entered upon the proper account-book of the said corporation.

From the time that said Williamson entered in the possession of the said railroad and its appurtenances, in 1858, continually, until the year 1864, no earnings were derived from the operation of the said line of road applicable to the payment of any interest on the 10 per cent. and 8 per cent. bonds issued by the said New Albany and Salem Railroad Company, and no interest-warrants were paid, or any payment made thereupon, but the entire interest accruing on such bonds during said period was suffered to fall into arrears, and on the filing of the supplemental bill herein remained wholly unpaid, and so continued until April, 1864, and at said date the said corporation was utterly insolvent, and no meeting of its directors had taken place since 1859, and there had been no election held by the stockholders since said last-mentioned date, and the value of said railroad and appurtenances was wholly insufficient to respond to said mortgage-debts, and a very large amount of interest had become due and payable to such bondholders—more than enough to exhaust all the revenues of said railroad if applied under the decree of this court.

160 When said sum of $200,000 was fully repaid, in April, 1864, those holding a majority of the 10 per cent. and 8 per cent. bonds demanded that the said Williamson, as trustee named in the said mortgages of February 8th, 1851, and February 14th, 1852, should, under the powers and provisions contained in said mortgages, retain the possession of said property, and receive and appropriate the tolls and income thereof, in accordance with the trusts created by said mortgages, and adjudged and decreed by the decree of this court in December, 1858.

Your orator further shows that the said Williamson did retain possession and control of the said railroad and appurtenances, continuously from April 30th, 1864, to September 30, 1868, and by himself and agents received and applied the income thereof, and stated the operations of the said road upon the books of account of the said corporation, and preserved the vouchers for all and singular of his disbursements at the principal office of the company at New Albany; and during said time the entire receipts and revenue of said railroad were faithfully applied towards the legitimate operating expenses and the liabilities and indebtedness of said railroad, and the purchase of proper and necessary materials for the repairs and renewals; except the sum of $29,700, paid out by said Williamson for a subscription to the stock of the Michigan City Harbor Company.

During the year 1864 and 1865 the said Williamson paid two years interest upon the 10 per cent. and 8 per cent. mortgage-bonds, and after the year 1865, until the year 1868, the expenses of said road exceeded the gross revenue thereof, and a floating debt accrued by reason of the operation of said railroad, to the amount of $100,000.

In September, 1868, an action was instituted by said Williamson in the White County common pleas court, of Indiana, against said corporation, to foreclose the mortgages upon the line of road, and procure a sale of the same, by virtue of which proceedings one George F. Talman and his associates, who held nearly all of said bonds for the use, benefit, and behalf of all bondholders of the class secured by the 10 per cent. and 8 per cent. mortgages, purchased the said line of railroad and its appurtenances, and as such purchasers, under the laws of Indiana, organized a new corporation called the Louisville, New Albany and Chicago Railway Company.

161 And from the institution of said action in the White common pleas court, up to December 1st, 1870, the entire amount of the revenues of said railroad were appropriated to the necessary operating expenses of said road, and the purchase of necessary renewals and repairs, except the sum of $180,000; and except said sum, the entire amount of the revenue of said railroad has been disbursed in operating the said road, and in the purchase of renewals and repairs, and for no other purpose; and for all such disbursements, due and proper vouchers are on file at the principal office in New Albany, Indiana.

And your orator further shows unto your honors that the said proceeding in said State court to foreclose the said mortgages was instituted in good faith by said Williamson, in the belief, and under advice by counsel, that this action was no longer pending, and that a foreclosure could not be obtained in the proceeding, but that a new action would have to be instituted to obtain sale of said railroad and appurtenances.

And, as your orator is informed and so believes, and therefore charges, the said bondholders who purchased the said railroad under the decree in the said State court did so in good faith, and believing that the said State court had jurisdiction to sell said property, and deliver them possession thereof; but so it is that this court has decided and decreed that the said State court had no jurisdiction in the premises to foreclose the said mortgages, or decree the sale of said road and appurtenances, but that the decree in that behalf is wholly void and of no effect.

The said line of road covered by the said mortgage is 288 miles in length, and, in consequence of the peculiar location, and the completion of shorter and better routes, its gross revenue has always been entirely disproportioned to its length, and for the past six or seven years it has required the most economical management to realize any income therefrom over and above the necessary expenses of operating the same.

And your orator shows that, with the exception of two years' interest, paid in the years 1864 and 1865, and the $180,000 realized since 1869 as aforesaid, and the $27,700 paid out at their request on account of the Michigan City Harbor Company, no money has been paid to or for the use of the 10 per cent. and 8 per cent. bondholders at any time since 1858, and no money has been realized for that purpose other than

162 aforesaid, and the entire amount of said bonds (except fourteen of the 8 per cent. bonds, which have been retired and cancelled) are now outstanding in the hands of the several holders thereof, together with all and singular the semi-annual interest-warrants attached thereto, and due and payable since 1859 to the present date, except those of

two years; and the said George F. Talman and others are holders of the entire issue of said 10 per cent. and 8 per cent. bonds and the coupons attached, except about $30,000; and, with the exception of the payment and just credits aforesaid, no part of the said bonded debt has been in any manner paid, discharged, cancelled, converted, or retired by the said corporation, or by said Williamson, or any other person; and the said Talman and others continue the owners and holders of said bonds, and have now within the jurisdiction of this court, and ready to present under its orders, the entire issue of said bonds, except about the sum of $30,000 as aforesaid.

And your petitioner further shows that nearly the entire equipment, and rolling-stock and machinery in use upon the said line of railroad have either been purchased since 1858, or that the equipment, rolling-stock, and machinery in use prior to that date have been substantially rebuilt; and that the money for such purchases and renewals has been realized by the operation of said line of railroad, and been paid out of its earnings, and in no other manner whatever; and the present fair value of said line of rail'oad from New Albany to Michigan City, including all its rolling-stock, machinery, supplies, and appurtenances, will not exceed $2,000,000. And the said railroad has not been able in any year since 1835 to realize from its income and revenues legal interest on that valuation over and above the necessary expenses of operating the same, and proper repairs and renewals.

Your orator shows to the court that, while the revenue of said road has not been and wi'l not be sufficient to pay interest on a valuation of $2,000,000, calculated at 6 per cent. per annum, that the regular accruing interest on the issue of the 10 per cent. and 8 per cent. bonds now held by the said Talman and others, amounts to the sum of $224,000 annually; and the present, past due, and unpaid interest on said bonded debt, for which the said parties hold the interest-warrants of said company, amounts to more than $2,500,000, and is largely in excess of the entire value of said line of road and its appurtenances and equipments of every character; and the present business and future prospects
163 of said road are of such character that it is entirely impossible that the indebtedness of said corporation can be paid so as to render the stock of said company of any value whatever.

And your orator further shows, by way of supplement, that since the payment of said $200,000 loan, and said $175,000 mortgage, the two mortgages aforesaid dated respectively February 8th, 1851, and February 14th, 1852, constitute the first and only indebtedness against, and lien upon, the property of said railroad company under the decree and order of this court, December 16th, 1858; and that the holders of the lands secured thereby are entitled to be paid in full out of the revenue of said property, and the proceeds of the sale thereof, before the intervening petitioners, John Savage Shaw and others, who are not bondholders but only stockholders, are entitled to anything whatever from said property or its earnings.

And your orator further shows that, besides the road and its equipments and appurtenances, then in existence, and in future to be acquired, the said mortgages pledge and transfer to him, as the trustee for said bondholders, the tolls, rents, and income of said railroad and all franchises of the said corporation; and it is further agreed and covenanted therein and thereby, that, in case of default in payment of any instalment of interest for the space of 60 days, that your petitioner, upon the request of the holders of such bonds, should enter into and take possession of all said property, and use and employ the same in ac-

cordance with the provisions and trusts enumerated in said two indentures; and it was further covenanted in said mortgages that no injunction, or stay of proceedings, or any process should be applied for or obtained by the said corporation to prevent such entry as aforesaid.

And your orator further shows that it was ordered and decreed by this court on December 16th, 1858, that the lien of said two mortgages should be preserved intact, and that, after the purchase of new machinery, and operating expenses, the entire revenues should be applied to the payment of the interest accrued on said bonds prior to May, 1859, before any dividend should be made to the persons taking stock, in accordance with the provisions of said decree.

And your orator shows that he has been requested by the holders of nearly the whole issue of bonds secured by said two mortgages, to
164 proceed to foreclose said mortgages, and make such entry as aforesaid, and take upon himself the administration of the trusts imposed by the said two indentures of mortgage, pending the entry of a decree for sale; and he therefore brings this amended supplemental bill before the court, and prays the court may forthwith make a decretal order placing him at once in the exclusive possession and management of all and singular the said mortgaged property, and under such regulations and restrictions as the court may deem proper, empowering him to use and employ and manage the same, and receive and appropriate the revenue of said property, in accordance with the requirements of the trust imposed upon him, until such time as a final decree for the sale of said property may be enrolled herein.

And your orator further shows that the entire revenues of said line of railroad, from 1858 to the present time, have been justly and faithfully applied towards the payment of the liabilities of said corporation, the necessary operating expenses and renewals and repairs, and the payment to the said bond-creditors, specified as aforesaid, and no other or different purpose whatever, and the evidence of such disbursements is preserved in the vouchers on file at the company's office, and your orator prays may be inquired of by the court.

And your orator further shows to the court that the said John Savage Shaw, and others who have intervened herein, do not hold any of the bonds secured by the two mortgages aforesaid, but that some of them, (but which particular person or persons your orator is not advised,) do hold some share of the common stock of the said Louisville, New Albany & Chicago Railroad Company; but that all and singular their interests are subsequent to the lien of the mortgages executed to your orator, and are subject thereto; and that the said corporation has not, nor has the said Shaw, or any of said intervenors or shareholders, or any one in their behalf, made or offered payment of the said bonds or interest-warrants, or any of them, or of the amounts so secured as aforesaid, by the two mortgages to your orator, or any portion thereof; but the said corporation and the said stockholders, and every one of them, have suffered and do still suffer the said bonds and interest-warrants, and every part thereof, to be in arrears and unpaid, and the conditions of said two mortgages to remain broken, all which actings and doings are con-
165 trary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator and his cestui que trusts.

In consideration whereof, and for as much as your orator is remediless in the premises, at and by the strict rules of the common law, and is only relievable in a court of equity, where such matters are properly cognizable and relievable:

Your orator prays that the court may, upon the matters of this supplemental bill, decree the foreclosure of said two mortgages, and the sale of said property, in such manner as the court may see fit, and may deem proper, and decree for the payment of the amount due, and to become due, upon the said mortgages and bonds; and that the said corporation and all its stockholders and creditors be barred and foreclosed of all equity of redemption in the premises; and that your orator may be let into the possession of said premises pending the enrollment of said decree; and all such further relief as the nature of the case may require and may be agreeable to equity.

CHARLES E. BILL.

HENDRICKS, HORD & HENDRICKS,
HENRY CRAWFORD,
Solicitors and of Counsel.

And upon his motion, the defendant is ruled to answer on or before the 12th of the present month.

And afterwards, to wit, at the May term of said court, on the 28th day of June, 1871, before the honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant herein, by Mr. Crawford, his solicitor, and asks to have the rule closed for an answer to the amended supplemental bill filed in this cause. Whereupon Mr. McDonald enters a special appearance, and moves that the order requiring an answer be set aside, for the reason that no process has been issued or served upon the defendant, John Savage Shaw, to said amended supplemental bill, and that there are no parties in court who ought to be held to answer.

And the court now overrules said motion; whereupon John Savage Shaw, by counsel, now files his demurrer to said amended supplemental bill, in words and figures following, to wit:

The demurrer of John Savage Shaw to the supplemental bill of complaint filed herein.

166 The said John Savage Shaw, for himself and the other parties standing in like relation herein, by protestation, not confessing all or any of the matters and things in the complainant's supplemental bill contained to be true, in such manner and form as the same are therein set forth and alleged, demurs to the said supplemental bill, and for cause of demurrer shows that the original bill of complaint herein was filed in behalf of the holders of all the bonds of the said railroad company, as well those secured by the mortgages of November 3, 1853, February 1, 1855, and December 1, 1856, as those secured by the mortgages of February 8, 1851, and February 14th, 1852. And the said trustee, by his said supplemental bill, seeks only to represent the holders of the bonds secured by the said mortgages of February, 1851, and February, 1852, in hostility to those holding the bonds secured by the other said mortgages, and without making such last-named holders parties to the said supplemental bill; that the matters set forth and alleged in the said supplemental bill do not entitle the said complainant to any relief in this court, touching the matters and things therein complained of; that, by the said supplemental bill, it is shown that the parties at whose instance the same is filed have been in the possession and enjoyment of the income of the mortgaged premises for the period of about six years.

And the said supplemental bill does not disclose the account of the income derived from the said property during the time said parties have so held such possession and enjoyed such income; that, by the said supplemental bill, it is shown that the parties at whose instance the same is filed have availed themselves of another jurisdiction in fraud of the rights of other parties herein, and in contempt of the jurisdiction of this court, to obtain possession of the property covered by the said mortgages; wherefore and for divers other good cases of demurrer appearing in said bill, the said Shaw for himself, and the said others standing in like relation, demurs thereto.

JOHN SAVAGE SHAW,
By HUGHES, McDONALD, RAY & HUFF,
His Solicitors.

We, the undersigned, of counsel for the said John Savage Shaw, hereby certify that, in our opinion, the foregoing demurrer is well founded in point of law.

S. A. HUFF,
McDONALD, BUTLER & McDONALD,
Attorneys for them.

167 State of Indiana, in the circuit court of the United States for the district of Indiana.

On this 12th day of June, 1871, personally appeared before me, the clerk of said court, Gideon Putnam, who, being by me duly sworn, on oath said: John Savage Shaw is a resident of the State of New York, and absent from the said district of Indiana; that he, the said affiant, is the authorized agent of the said Shaw, respecting the cause referred to in the foregoing demurrer; and that the said demurrer is not interposed for delay.

GIDEON PUTNAM.

Subscribed and sworn to before me this 12th day of June, 1871.
J. D. HOWLAND.

And afterwards, to wit, at the May term of said court, on the 18th day of July, 1871, before the Hon. Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Hilary Clay, the special master heretofore appointed in this cause, and files his report and resignation in the words and figures following, to wit, which is accepted.

And thereupon, by agreement, it is ordered that said master be allowed $150 for his services herein, and that the receiver be directed to pay the same.

And thereupon the court appoints Simeon K. Wolfe, of the city of New Albany, as such special master.

It is further ordered that a copy of this order, together with a copy of the original order of instructions heretofore entered in this cause, be certified to said Simeon K. Wolfe, master as aforesaid.

And afterwards, to wit, at the May term of said court, on the 19th day of July, 1871, before the honorable Walter Q. Gresham, judge of said court as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by his solicitors, and comes also the said John Savage Shaw, by his solicitors; and the demurrer heretofore filed herein by the said Shaw, to the amended supplemental bill of the complainant, coming on to be heard, was argued by counsel; and the court being advised, doth overrule the said demurrer. And the court rule the said John Savage Shaw to answer the said amended supplemental bill on or before the first rule-day in September.

168 And now also comes George H. Chapman, esq., the receiver herein, and files his half-yearly report for the period ending May 31st, 1871, and the said report is, by the court, referred to J. D. Howland, master in chancery, who is directed to examine the same, and the entries and vouchers connected therewith, and report upon the same at the next term of the court.

And said report, above referred to, is in the words and figures following:

George H. Chapman, receiver in the above-entitled cause, being duly sworn, on oath says that the annexed Exhibit A contains a full, true, and complete account of his receipts and disbursements from the first day of December, 1870, to the thirty-first day of May, 1871, both inclusive.

At the time when the Indianapolis, Cincinnati and Lafayette Railroad Company was placed in the hands of receivers, by order of the Marion civil circuit court, of the State of Indiana, there was owing from that company to the Louisville, New Albany and Chicago Railroad Company, on freight and passenger account, about fifty-seven hundred dollars. These accounts still remain unpaid. If they had been paid at the usual time, the amount received would have appeared in the receipts of the period embraced in the report herewith submitted.

The compensation for mail-service for the quarter ending March 31st, 1870, amounting to seven thousand eight hundred dollars, was not collected at the usual time, owing to some delay in making the necessary changes in the agency by the post-office. Had this amount been collected at the usual time it would have appeared in the receipts of the period embraced in the report herewith submitted.

Many of the bridges on the line of the Louisville, New Albany and Chicago Railroad were in a very dilapidated condition when your receiver took possession of the property; and, to insure a safe and successful operation of the road, it has become necessary to make large expenditures in the way of rebuilding and renewals. A new bridge structure has been placed on the Little Wea Creek, at a cost of seven hundred and thirty dollars and sixty cents, ($730.60;) towards reconstruction of a portion of the bridge over East White River there has been expended, during the time embraced in this report, seventeen hundred and seventy-eight dollars and eighty-nine cents; towards

169 reconstruction of a bridge over Blue River there has been expended, during the period embraced in this report, three hundred and ninety-seven dollars and forty-two cents; for general repairs (material and labor) on bridges, other than already specified, there has been expended forty-two hundred and fifty-four dollars and twenty cents; for general repairs (material and labor) on culverts, twenty-three hundred and sixty-three dollars and six cents; and for forty-three car-loads of stone for culverts, three hundred and one dollars. In order to guard against disaster in the operation of the road, the bridge over the Big Wea Creek should give place to a new structure at an early day, and a portion of the bridge over the Kankakee River should be renewed.

Much of the iron of the road has been in use for many years and is badly damaged by wear, so that to put the road in anything like first-class order, a great deal of new iron would be required. Your receiver has deemed it judicious to expend a liberal portion of the earnings of the road in new iron, and has, therefore, in the period covered by report, devoted seventeen thousand four hundred and fifty-seven dollars and fifty-seven cents to the purchase of new iron, which iron has been laid down upon the road at a still further expense for material and labor, all of which is embraced in the disbursements herewith reported.

In order to meet the demand of the road, your receiver has caused to be constructed one passenger-coach, now nearly completed, upon which four thousand five hundred dollars ($4,500) was expended, in the period covered by this report; also one baggage and mail car, at a cost of two thousand four hundred and three dollars and sixteen cents, ($2,403.16.) And your receiver further states, upon his oath, that the annexed Exhibit B contains a full, true, and complete account, so far as the same can now be ascertained, of the earnings and operating expenses of the Louisville, New Albany & Chicago Railroad, under the control of your receiver, from Dec. 1st, 1870, to May 31st, 1871.

Exhibit A.

RECEIPTS.

Balance from Nov., 1870, account			$23,300 36
From freight	$205,027 34		
From passengers	140,338 07		
From mail	12,052 56		
170 From express	9,343 10		
From telegraph	1,797 23		
From miscellaneous	2,966 27		
		$371,524 57	
			$394,824 93

DISBURSEMENTS.

For office and station expenses	$4,396 20
For train-expenses	1,005 48
For oil, waste, and tallow	4,462 02
For repairs of cars	13,505 52
For repairs of engines	8,877 66
For repairs of buildings and fixtures	2,824 27
For repairs of bridges and culverts	4,034 31
For repairs of roadway	5,771 72
For new iron	17,457 57
For telegraph expenses	634 07
For stationery and printing	3,484 90
For legal expenses	1,376 68
For injuries to animals	1,815 50
For personal injuries	24 45
For earnings refunded	476 58
For taxes, rent, and insurance	8,141 14
For machine-shop expenses	213 01
For liabilities to operatives	213,316 80

	$291,812 80	
For liabilities for wood	14,005 27	
For liabilities for ties	13,148 66	
For preparing wood	33 00	
For bridge-tolls	4,867 85	
For railroads for freight	11,947 62	
For railroads for passage	536 39	
For engine and car mileage	4,507 84	
For interest, discount, and exchange	47 06	
For damage and loss on freight and baggage	740 01	
For locomotive service	6 55	
For deposit Farmers' Loan and Trust Co.	25,000 00	
		$366,653 13
Balance		$24,171 80

171 And afterwards, to wit, in vacation of said court, on the 7th day of August, 1871, the following further proceedings in the above-entitled cause were had, to wit:

Come now the intervening parties herein, John Savage Shaw, Laura W. Shaw, Laura H. Shaw, Frank E. Shaw, Gideon Shaw, Helen Shaw, James E. Emerson, Augusta J. Emerson, (administratrix of Edward B. Emerson,) Blanche V. Babcock and Morgan N. Babcock, her husband, Gideon Putnam and Stella C. Putnam, his wife, Henry W. Shaw, and Avery V. Williams, by counsel, and file their motion for the production by the complainant of the bonds mentioned in his supplemental bill of complaint, and described as the ten per cent. and eight per cent. bonds, upon which he seeks a foreclosure of the mortgages of February 8, 1851, and February 14, 1862, for inspection before answer to said supplemental bill.

And said complainant comes by Hon. T. A. Hendricks, his solicitor, and upon his motion the said Louisville, New Albany and Chicago Railroad Company is three times called and comes not, but wholly makes default, and fails to answer, plead, or demur to said supplemental bill. Whereupon it is ordered that, as to said Louisville, New Albany and Chicago Railroad Company, said supplemental bill and the matters and things therein contained be, and the same hereby are, taken for confessed and true.

And afterwards, to wit, in vacation of said court, on the 4th day of September, 1871, the following further proceedings in the above-entitled cause were had, to wit:

Come now the intervening defendants, by Messrs. Hughes, McDonald, Ray, &c., their solicitors, and file their answer to the supplemental bill herein, which is in the words and figures following, to wit:

The joint answer of John Savage Shaw, Laura W. Shaw, Laura H. Shaw, Frank E. Shaw, Gideon Shaw, Helen Shaw, James E. Emerson, (administrator of Charles N. Emerson, dec'd,) Augusta J. Emerson, (administratrix of Edward B. Emerson, dec'd,) Blanche V. Babcock and Myron H. Babcock, her husband, Gideon Putnam and Stella C. Putnam, his wife, Henry W. Shaw, and Avery V. Williams, defendants, admitted by leave of the court to the supplemental bill of complaint of Charles E. Bill, trustee, against these defendants and others.

These defendants, respectively, now and at all times hereafter
172 saving to themselves all and all manner of benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material for them to make answer to, answering, say—

They admit that Charles E. Bill, the complainant, is a citizen of the State of New York, but they deny that he is now trustee, as in said bill alleged, because they affirm that he has abandoned and forfeited his powers and duties as trustee under the said several mortgages, in the manner and under the circumstances hereinafter set forth and stated.

These defendants, further answering, admit that a corporation called and named the New Albany & Salem Railroad Company, constructed the line of railroad mentioned in said supplemental bill of complaint, and also say that, under the provisions of the charter of the New Albany & Salem Railroad Company, a line of railroad from Michigan City, in the State of Indiana, to the east line of the State of Illinois, was constructed, and from the time of the construction has been run and operated by the Michigan Central Railroad Company, a corporation chartered under and by virtue of the laws of the State of Michigan, without right, and which justly pertains and belongs to the assets and means of the said New Albany & Salem Railroad Company, subject to proper equities.

These defendants, further answering, admit that the name of the said New Albany & Salem Railroad Company, as a corporation, was, on or about the day of , 1858, by competent authority, changed to that of the Louisville, New Albany & Chicago Railroad Company, but they deny that the said corporation has now any power or existence, except as a ward of this court, under and by virtue of the decree and decretal orders heretofore made in this cause, and of record in this court, and for the purpose of equity, as may be determined and adjudged by this court herein; and these defendants say that said last-named corporation has wholly failed to keep up and maintain its corporate organization, by the neglect, misuser, and nonuser of its president and board of directors, and without any default of the stockholders or of these defendants.

These defendants, further answering, admit the execution of
173 the several mortgages, the issuing of the several series of bonds, and the appointment of trustees, as alleged in the said supplemental bill, and the default in the payment of interest on the said several series of bonds, as alleged in the said bill.

Further answering, these defendants admit the institution of a suit in chancery in this court, referring, for accurate details of the same, to the record herein for the correction of the said supplemental bill, and admitting the facts so far as in said record appear, and no farther; and these defendants say that the corporate name of the said New Albany and Salem Railroad Company was changed pendente lite, and not otherwise.

Further answering, these defendants admit the proceedings in said suit as they appear of record in full, and not otherwise; but they admit none of the constructions of the same in the said supplemental bill set forth, but refer to the said proceedings and their true interpretation to the judgment of this court.

Further answering, these defendants admit that the said complain-

ant, Charles E. Bill, was admitted as a substitute complainant for the said Williamson in the original suit, upon information to the court of the death of the said Williamson, and of his having, before his death, pending proceedings in this court, entered suit in another jurisdiction for the foreclosure of the said several mortgages, in contempt of the decree of this court; and that he was so admitted as such substitute complainant upon the petition of the said defendant, John Savage Shaw, for himself and others in like relation, to be admitted to defend in their own right upon the death and default of said Williamson and of the said railroad company to perform their duties, and not otherwise; but these defendants aver that, after the order of this court requiring the said Charles E. Bill to appear to the said petition of the said Shaw had been made and brought to the knowledge of said Bill and his counsel, and before the said Bill did appear and cause himself to be entered as a complainant in the original suit, in place of the said Williamson in this court, he, the said Bill, in contempt of the orders and decrees of this court, and in utter disregard of his duties and obligations as such trustee, under the deeds and mortgages set out and referred to in the said supplemental bill, did cause his name to be substituted in the aforesaid other jurisdiction, (the White common pleas of the State of Indiana,) in the place of the said Williamson, and did enter upon the pros-
174 ecution and consummation of said suit of foreclosure therein.

And these defendants aver that the first use the said complainant Bill made of his position and standing in this court, as complainant in the original suit, in the place of the said Williamson, was an attempt to dismiss the same, and thereby get rid of the petition of the said Shaw, and oust this court of its jurisdiction; in proof whereof these defendants refer to the record of this cause. Wherefore they protest, and say that said Bill is not now rightfully trustee under said deeds in his supplemental bill mentioned, and has no right to prosecute this suit.

Further answering, these defendants admit the death of the said Douw D. Williamson, and that in his life-time he took possession of the said railroad as a special trustee under the orders and decree of this court, for the purpose specified and set forth in said orders and decrees, and not otherwise; and they allege that, up to the time of his death, he had not rendered an account of such special trust, nor been relieved nor discharged therefrom.

Further answering, these defendants admit that David A. Noble, the president of the said railroad company, was, for some time during the life-time of said Williamson, the immediate superintendent and operator of said road, but by what authority these defendants have no knowledge, information, or belief; neither have they knowledge, information, or belief as to the disbursements and business accounts of said road, nor how nor why said Noble ceased to superintend, run, and operate the same; but they allege that, long before the death of said Williamson, said Noble did cease to attend to the business of said road, and that both he and the directors thereof abandoned their functions and duties entirely, failed to hold meetings, and left all in the hands of said Williamson, where it was at the date of the transactions hereinafter set forth, whereby, under a fraudulent combination, said road passed into the possession of a number of persons claiming to be a corporate body under the name of the Louisville, New Albany and Chicago Railway Company.

Further answering, these defendants admit the payment and extinguishment of the mortgage-debt of one hundred and seventy-five thou-

sand dollars of the Crawfordsville and Wabash Railroad Company, the payment of which was assumed by the New Albany and Salem Railroad Company.

Further answering, these defendants say that, as to the earn-
175 ings of the said railroad from and after the year 1858 to 1864, and whether they were sufficient to enable the said Williamson to pay off the $200,000 loan provided for in the decree of June 23d, 1858, after the payment of operating expenses and necessary repairs and renewals before the latter period, these defendants have no knowledge, information, or belief; and they say that, until the matters of account relating to the receipts and disbursements connected with the trust of the said Williamson, under the decree of June 23, 1858, shall have been examined by the master of this court herein, these defendants have no means of answering; hence these defendants require proof of the allegations of the said supplemental bill respecting the receipts and disbursements made by the said trustee, Williamson, from the time he assumed the trusts under said decree of June 23d, 1858, until the year 1864.

These defendants admit that two years of the interest on the ten per cent. and eight per cent. mortgage-bonds was paid out of the earnings of the road during the years 1864 and 1865; but they do not admit that, after the year 1865, until the year 1868, the expenses of the road exceeded the gross earnings thereof; for, according to all the information these defendants have been able to obtain respecting the business of the road during the period last named, they believe that the earnings thereof were greatly in excess of the legitimate expenses connected with its operation and the necessary repairs and renewals; but these defendants are not sufficiently informed as to the matters of fact in this respect to enable them to state the accounts of this period, and they cannot make such statement until they shall have been more fully advised from the facts that may be disclosed under the examinations of the master herein. They are wholly ignorant as to the allegation that a floating debt of about $100,000 accrued during said period by reason of the operation of the road. Therefore these defendants require proof as to the allegations in the said supplemental bill respecting the receipts and disbursements of the said trustee, Williamson, from the year 1864 to the year 1868, and of the various items of floating debt that accrued during said period.

These defendants, further answering, admit that, in September, 1868, an action was instituted by the said Williamson in the White common pleas court of Indiana against the said Louisville, New Albany and
Chicago Railroad Company to foreclose the mortgages upon the
176 line of the said road, and to procure a sale thereof, and they aver that said action was so instituted at the instance and by the procurement of the said George F. Talman and his said associates, who held nearly all of said bonds, and at whose instance and by whose procurement the original bill of complaint herein was filed, and at whose instance the said supplemental bill has been filed; and these defendants aver that said suit was instituted in the said White common pleas court in the name of the said Williamson, by the procurement of the said George F. Talman and his associates, with the full knowledge of the pendency of the original bill herein and of the decrees of June 23d, 1858, and of December 16th, 1858, and with the knowledge of the fact that the said Williamson, at the time said suit was instituted in said State court, had come into the possession of all the property of said railroad company by virtue of the provisions of the said decree of June

23d, 1858, and that he never rendered to this court any account of the trusts committed to him under the last-named decree. These defendants further say that the said George F. Talman and his said associates, by the proceedings and decree of the said White common pleas court, availed themselves of all the remedy they ever had for the enforcement of their claims as holders of said bonds, and of all the relief to which they ever were or could be entitled by reason of the trusts mentioned in the said several mortgages; and that as to the said Talman and his said associates, the said several mortgages have been foreclosed, and the trusts therein and thereby created have been fully executed in a jurisdiction of their own selection, having competent powers to afford such relief as the said Williamson, as such trustee, was in any manner entitled to. These defendants were in no wise parties to the said suit so instituted in the said White common pleas, and never at any time assented thereto; and while they insist that, as to the said George F. Talman and his associates, the action so taken by the said Williamson, at their instance and by their procurement, is final, these defendants are not thereby precluded from the assertion of all their rights as the holders of the stock and bonds of the said railroad company as fully and completely as though no such proceedings had been instituted in the said State court. These defendants, further answering, admit that the said Talman and his said associates availed themselves of the final execution of the judgment and decree so procured by them in the said State court, and purchased the said line of railroad and its
177 appurtenances at a sale made by the sheriff under the said judgment and decree of the said State court; but these defendants deny that, as to the holders of the stock and bonds of the said company, who never participated in the said proceedings in said State court, any title to the said line of road and its appurtenances was acquired by said purchase by the said Talman and his said associates.

These defendants, further answering, admit that a new company was organized by the said Talman and his said associates, and that said company assumed the corporate name of the Louisville, New Albany & Chicago Railway Company, but whether the said organization was in conformity with the laws of Indiana, these defendants are not sufficiently advised to answer. They aver, however, that, concurrently with the organization of the said new company, the said Talman and his said associates surrendered to the said new company all the 10 per cent. and 8 per cent. bonds held by them, and heretofore secured by the said mortgages of February 8th, 1851, and February 14th, 1852, and converted them into the stock of the said new company so organized by them; and that the entire capital stock of the said new company, as far as the same was paid up, was paid by the said surrender of said bonds. These are the bonds upon which the complainant herein is, by his said supplemental bill, seeking a foreclosure of the said mortgages of 1851 and 1852, and it is at the instance and by the procurement of the said George F. Talman and his said associates, and at the instance of no other persons in interest, either as bondholders or stockholders of the said Louisville, New Albany & Chicago Railroad Company, that the said Charles E. Bill has assumed his present attitude in this suit. These defendants were not, nor was either of them, parties to the said action in the White common pleas court, and the other proceedings therein, and had no knowledge thereof until long after the said new company had been organized and said bonds had been converted into the stock thereof as above shown. In the meanwhile the said George F. Talman and his said associates had taken exclusive possession of said railroad, and all

the property of the said Louisville, New Albany & Chicago Railroad Company, and were assuming to hold the same by virtue of their rights as holders of the stock of the said new company and appropriating said property and the proceeds thereof to their own exclusive
178 use, denying that any others, as stockholders or holders of the bonds of the said original company, had any rights therein. As soon as the facts respecting the conduct of the said George F. Talman and his said associates, in thus attempting to exclude all others from their interests in the property of the said original company, had come to the knowledge of these defendants, and preparation could be made to seek relief from the claims thus set up by the said Talman and associates, the said defendant, John Savage Shaw, in his own right, and for the other, these defendants, applied to this court for leave to be placed in such standing upon the record herein as that he and the other, these defendants, might assert and maintain their rights in the premises; and these defendants refer the court to the application so made, and the proceedings thereafter had herein up to the time of the filing of the said supplemental bill of complaint herein by the said Charles E. Bill, and to the exhibits and affidavits filed herein by the respective parties since the filing of the said application by the said defendant, John Savage Shaw, or to so much and such parts thereof as may become material to be referred to. These defendants show that, in all the aforesaid conduct of the said Talman and his associates, the said Charles E. Bill has, from the time of the death of the said Douw D. Williamson, been a confederate; that, after he and the said Talman and associates had been notified that the said Charles E. Bill was requested to cause himself to be made trustee complainant in substitution of the said Williamson, he caused himself to become the party plaintiff in substitution of the said Williamson in the said action in the White common pleas court; that he so became such plaintiff at the instance and by the procurement of the said Talman and associates, in contempt of the jurisdiction, and in defiance of the order of this court requiring his presence in this court; and whether, from the institution of the said action in the White common pleas court up to December 1st, 1870, the entire amount of the revenues of the said railroad were appropriated to the necessary operating expenses of said road and the purchase of the necessary renewals and repairs, except the sum of $180,000, and except said sum, the entire amount of the revenues of the said railroad have been disbursed in operating the said road, and in purchasing of renewals and repairs, and for no other purpose, and for all such disbursements due and proper vouchers are on file at the principal office, in New Albany, Indi-
179 ana, these defendants cannot answer, for the want of sufficient knowledge, information, and belief, and can only answer in relation thereto upon examination to be had before the said master.

Further answering, these defendants deny that the said proceeding in the said White common pleas to foreclose the said two mortgages was instituted by the said Williamson, in good faith, in the belief that a foreclosure could not be obtained in this proceeding. These defendants also deny that the bondholders who purchased the road under the decree in the said State court did so in good faith. These defendants affirm that the said Williamson, and the said Talman and associates, knew that this court, at the time the said action in the State court was instituted, had full and complete jurisdiction of the entire subject-matter of the said mortgages and the trusts created thereby, and extended by the decree of December, 1858; and that at the time said action in the State court was so instituted, there was an order of this court only

partially executed, for a sale of part of the property covered by the said mortgage of February 14, 1852, to wit, the branch-line of railroad from Gosport to Indianapolis. This order was made December 8, 1865, and, according to the report filed the 5th day of July, 1869, a sale was made September 4, 1867, but no report had been made, in accordance with the order directing the sale, until July 6, 1869, when a report, verified February 8, 1869, was filed, all which appears of record in this cause.

These defendants, further answering, admit that the line of road covered by the mortgage of February 14, 1852, from New Albany to Michigan City, is 288 miles in length, but whether, in consequence of its peculiar location and the competition of shorter and better roads, or from other causes, its gross revenues have always been entirely disproportionate to its length, these defendants have not sufficient knowledge, information, or belief to answer, as such answer must depend in a great degree upon the facts to be disclosed by the said master's examination, of which these defendants are ignorant; and they answer in like manner as to the charge that for six or seven years it has required the most economical management to realize any income therefrom over and above necessary expenditures. It appears, however, that, since September, 1868, and prior to December, 1870, at least $180,000 of such earnings have been applied to other uses than such necessary expenses, but to
180 what use these defendants are left in ignorance as far as any allegations in the supplemental bill afford light on the subject; $90,000 of the sum of $180,000, have been taken from the jurisdiction of this court since its order appointing a receiver herein, in direct violation of the terms of that order, and is now withheld in defiance and contempt of the authority and jurisdiction of the court, and the entire sum of $180,000 has been appropriated without the sanction of the court, since it was known to said Talman and associates that it was the duty of the trustee to render his account to this court; and these defendants are informed, and they believe and charge, that the funds so removed were taken by the procurement of the said Talman and associates, with the knowledge and consent of the said Charles E. Bill, the trustee complainant in the said supplemental bill, in violation of his trusts in the premises; and as to the sum of $90,000, removed since the order for the appointment of the receiver, these defendants affirm that it was removed to evade the operation of the said order of this court.

These defendants, further answering, say that, as to the charge in the said supplemental bill, "that, with the exception of the two years' interest paid in the years 1864 and 1865, and the $180,000 realized since the year 1869, as aforesaid, and the $29,700 paid out at their request on account of the Michigan City Harbor Company, no money has been paid to or for the use of the said 10 and 8 per cent. bondholders at any time since 1858, and no money has been realized for that purpose, other than as aforesaid, and the entire amount of said bonds, (except fourteen of the 8 per cent. bonds which have been retired and cancelled,) are now outstanding in the hands of the several holders thereof, together with all and singular the semi-annual interest-warrants attached thereto, and due and payable since 1859, to the present date, except those of two years, and the said George F. Talman and others are the holders of the entire issue of said 8 and 10 per cent. bonds and the coupons attached, except about $30,000; and, with the exception of the payments and just credits aforesaid, no part of the said bonded debt has been in any manner paid, discharged, cancelled, converted, or retired by the said corporation, or the said Williamson, or any other person," these defendants admit it to be true that the said Talman and others have the con-

trol of said entire issues of said bonds, except about the sum of $30,-
000; but they say that the same were converted into the stock of
181 said new company as herebefore, and if the complainant holds
said bonds, with coupons attached, or has such power over them as to be able to produce them under the order of this court, it is because the said Talman and his associates, upon the surrender and conversion of said bonds, as aforesaid, constituted the new company so organized as aforesaid, which these defendants charge to be the fact, upon information derived from an affidavit of one of complainant's solicitors and other exhibits filed in this cause, to which reference is made. Whether the charge that no money has been realized for the purpose of meeting said bonds, except as in said bill admitted, these defendants have no knowledge or information, other than such as has been derived from the statements of the solicitors of the complainant in the progress of this case; and whether the charge so made is true depends (upon) the facts yet to be disclosed by the investigations of the master; hence, if at all material, these defendants ask that the complainant be put to the proof of the said allegation.

These defendants, further answering, say they are ignorant as to whether the revenues of said road have or have not been sufficient, or they will not be sufficient, to pay interest on a valuation of $2,000,000, at 6 per cent. per annum; though it appears, from the admissions of the complainant, contained in his supplemental bill, that, since 1869, the sum of $180,000 has been raised from said revenues in excess of the expenditures incident to the keeping up and running said road; and it remains to be ascertained, from the master's examination, [if] a larger sum has not been realized. It is doubtless true that the interest on the 10 per cent. and 8 per cent. bonds held by Talman and his associates, and now claimed to be subsisting liabilities against the company, at the regular rate provided for in said bonds, amounts to $234,000, and that the interest-warrants held by the same parties, past-due and unpaid, except as to the outlay for the purchase of new machinery, and in repairs to old machinery, and for the renewals of the track of said road, amounts to $2,500,000; but these defendants say that, for all outlay for said new machinery, repairs of old machinery, and renewals, there should be a credit upon the said 10 per cent. and 8 per cent. bonds to the amount of such outlay. And these defendants have already shown in this answer that the entire amount of said bonds held by the said
Talman and his associates, with the interest-warrants thereon,
182 were surrendered to the said new company; and hence these defendants claim that the said Talman and his associates are not in a condition to claim a foreclosure of said 10 per cent. and 8 per cent. mortgages, either directly or through the instrumentality of the said Charles E. Bill, as the trustee; and in this view of the rights of the parties, these defendants deny that it is impossible, from the present business and future prospects of the road, that the indebtedness of the corporation can be paid.

These defendants answer that it is not true, as alleged in said supplemental bill, that the two mortgages of 1851 and 1852 constitute the only lien upon the property of said railroad company, as there remain outstanding in the hands of parties who did not assent to the arrangement embodied in the decree of December 16th, 1858, bonds secured by mortgages of 1853, 1855, and 1856, amounting, in the aggregate, with interest, to over half a million of dollars, as these defendants are informed. Some of these bonds are owned by a portion of these defendants; that is to say, the defendants Frank E. Shaw, Gideon Shaw, and Helen

Shaw, the children of Robert Shaw, deceased, own of these bonds to the amount of $20,500, exclusive of interest, which were held by a party who never assented to the terms of the decree of December, 1858, and never surrendered them for stock. The defendant Gideon Putnam, is the owner of one of this class of bonds of the denomination of one thousand dollars, derived from a party who never assented to the terms of said decree of December, 1858, and did not surrender the same; and the defendant John Savage Shaw is the holder and owner of one of said bonds of a like denomination, derived in like manner from a party who did not assent to said decree of December, 1858, and who did not surrender the same. These defendants are not informed so as to state the names of the holders of the evidence of the outstanding bonds of the several series of 1853, 1855, and 1856, nor whether such holders intend to assert any claim herein on account thereof; but as to these defendants, they deny that the said Frank E. Shaw, Gideon Shaw, Helen Shaw, Gideon Putnam, and John Savage Shaw, are only holders of stock in said company, and not bondholders, as alleged in said supplemental bill; and they affirm that, as to the defendants Gideon Putnam and John Savage Shaw, they are holders of both bonds and stock of said company; and the said defendants, the children of Robert Shaw, are holders of bonds, but not of stock, in said company; all the other
183 these defendants are holders of stock in said company, and all the stock held by these defendants was derived from the conversion of bonds of the series of 1853, 1855, and 1856, in pursuance of the decree of December, 1858.

Further answering, these defendants say that the provisions contained in [the] 10 and 8 per cent. mortgages, and the legal effect thereof, as also the legal purport and effect of the decree of December, 1858, are before the court for its interpretation.

Further answering, these defendants say they have no knowledge, information, or belief as to the persons by whom the complainant has been requested to proceed to foreclose. They deny, however, that any such request has been made by persons other than the said Talman and his said associates; and they aver that, by their conduct in the institution of the suit in the said White common pleas court, and their proceedings thereunder, and the conversion of their 10 and 8 per cent. bonds into stocks of the new company, organized by them as admitted in the said supplemental bill, they are powerless to direct the trustee in the premises.

These defendants, further answering, that as to the allegations in said supplemental bill that the entire revenues of said line of railroad from 1858 to the present time have been justly and faithfully applied toward the payment of the liabilities of said corporation, the necessary operating expenses and renewals and repairs, and the payment to the said bond-creditors specified in said bill, and to no other or different purpose whatever, and that the evidence of such disbursements are preserved on file at the company's office, these defendants are ignorant, and can only answer after the facts shall have been disclosed by the investigations of the master.

These defendants admit that they do not, nor does either of them, hold any of the bonds secured by the two mortgages of February, 1851, and February, 1852, and they say that their interests respectively as bondholders and stockholders are correctly stated in the intervening petitions by them heretofore filed herein, to which they refer, except that the defendant Gideon Ptnam is the owner of a bond for $1,000, as well as the one for $500, as stated in the petition filed by him and others

in this court on the 28th day of November, 1870. Further answering, these defendants admit that they have not, nor has the corporation offered to pay the said 10 per cent. and 8 per cent. bonds, or any of them, or the interest-warrants thereto attached; and they say
184 that, up to the time that this court made the order placing the said road in the hands of the receiver, in November, 1870, and continuously to the time of the filing of the said supplemental bill, both the complaint herein and the persons claiming to be holders of said bonds, at whose instance and under whose directions the complainant has at all times acted in the premises, have deemed that these defendants, and the other stockholders of said corporation, and the corporation itself, had any interest in the property of said company, or any rights to any accounts of its business while in the hands of the said Talman and his said associates. These defendants are ignorant as to whether nearly the entire equipment and rolling-stock and machinery in use upon said line of road had been either purchased since 1858, or that the equipment, rolling-stock, and machinery in use prior to the year 1858 have been substantially rebuilt, and that the money for such purchases and renewals has been realized by the operation of the said line of railroad, and has been paid out of its earnings, and the facts as to this allegation can only be fully ascertained so as to be known to these defendants by the examination now being made by the master; and if true, as alleged in said supplemental bill, the expenditures so made should have been credited upon the bonds held by the parties at whose instance the complainant is seeking a foreclosure. These defendants, therefore, insist that the account of such expenditures shall be fully taken and exhibited to this court before any decree of foreclosure upon such of the 10 per cent. and 8 per cent. bonds as remain outstanding and not surrendered for stock in the new company.

These defendants having fully answered the said supplemental bill, these defendants pray to be hence dismissed without costs, etc.

JAMES HUGHES,
SAMUEL A. HUFF,
McDONALD & McDONALD,
M. M. RAY,
Solicitors for Intervening Defendants.

STATE OF INDIANA, *Floyd County, ss:*

Before me, the undersigned, a notary public in and for the said county and State, on this 25th day of August, 1871, personally appeared Gideon Putnam, who, being by me duly sworn, on his oath says he is one
185 of the defendants named in the foregoing answer to the supplemental bill of complaint of Charles E. Bill, trustee, etc., vs. The Louisville, New Albany and Chicago Railroad Company and others, and that the said answer as to the matters of fact therein stated upon the knowledge of the answering defendants is true, and as to such matters of fact therein stated upon information and belief, he believes the said answer to be true.

GIDEON PUTNAM.

Subscribed and sworn to before me this twenty-fifth day of August, 1871.

Witness my hand and notarial seal.

[SEAL.]

W'M J. DYER,
Notary Public.

And afterwards, to wit, in vacation of said court, on the 6th day of October, 1871, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by Messrs. Hendricks, Hord and Hendricks, and H. Crawford, his solicitors, and withdraws his exceptions to the answer of the intervening defendants to the supplemental bill herein, and now files his replication thereto; which is in the words and figures following to wit:

The reply of the complainant, Charles E. Bill, to the joint answer of John Savage Shaw and others, filed on September 4, 1871, in the above-entitled cause.

The repliant, saving and reserving to himself all and all manner of advantage of exception which may be taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto saith: That he doth and will aver and prove his said bill of supplemental to be true, certain, and sufficient in law to be answered unto; and that the said joint answer of said defendants is uncertain, evasive, and insufficient to be replied unto by this repliant; without that, that any other matter or thing in said answer contained, material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied is true.

All which matters and things this repliant is ready to aver and maintain, and prove as this honorable court shall direct; and prays, as in and by his said bill of supplement he has already prayed.

HENDRICKS, HORD & HENDRICKS,
H. CRAWFORD,
Solicitors for Complainant.

186 And afterwards, to wit, at the November term of said court, on the 7th day of November, 1871, before the honorable Walter Q. Gresham, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now J. D. Howland, master in chancery, and files his report of evidence upon the receiver's prayer for compensation, in the words and figures following:

And thereupon it is ordered by the court that said master be allowed the sum of $60 for his services in said reference, to be taxed with the costs in this cause.

And afterwards, to wit, at the November term of said court, on the 8th day of November, 1871, before the honorable Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now S. K. Wolfe, esq., the master heretofore appointed in this cause, and files his report herein, in the words and figures following, to wit:

The undersigned, special master in chancery, to whom said cause was referred for an account, respectfully submits to the court the following informal report:

I accepted said trust and entered on the discharge of the duties thereof on the 24th day of August, 1871. Having mailed to the attorney of the parties notice that I would begin the taking of said account at my office, over No. 103 Pearl street, in the city of New Albany, Indiana, on the day last named, John Savage Shaw et al., by their attorneys, S.

A. Huff, esq., and James Hughes, esq., appeared. And the attorneys for the other parties not appearing, I adjourned the further hearing of said matter until the 8th day of September, 1871, at the same place; and I gave notice thereof to the attorneys of said non-appearing parties, of which notice Hendricks, Hord & Hendricks acknowledged service on the 28th day of August, 1871.

On the 8th day of September, 1871, Shaw et al. appeared by M. M. Ray, esq., their attorney, and none of the other parties appeared, either in person or by attorney. At this meeting an examination of the books and records of said railroad company, in the office of said company, in the city of New Albany, was commenced; and after a cursory examination of said books and records, and the examination of Mr. Brooks, the auditor in the receiver's office, who is the present
187 custodian of said books and records, and the examination of Mr. Lyman, who was for many years the secretary of said railroad company, it was, in view of the facts disclosed, deemed by me almost wholly impracticable to proceed with the taking of the account of the stock, and such other branches of such account as require the examination of said books and records, without other and additional powers be given to the master, and in relation to which I respectfully refer the court to suggestions which may below be annexed to this report.

The further hearing of said matter was then, for the reason stated, and at the suggestion and upon the motion of Mr. Ray, adjourned until the 22d day of September, 1871, at the same place; and, on the day last named, Thomas A. Hendricks, esq., and S. A. Huff, esq., attorneys for the parties, appeared; and by the consent and agreement the further hearing herein was adjourned until the 4th day of October, 1871, at the city of Indianapolis, for the purpose of taking an account of the bonds in controversy in said suit, and which were said by them to be in said city.

On the 4th day of October, 1871, in pursuance of said agreement of the parties, I was in said city for said purpose; but none of the parties were ready to proceed with said accounting, the attorneys for the defendants, Shaw et al., alleging that they did not know in whose custody said bonds were deposited; and it appearing that the attorneys for the plaintiff, who were in possession of the knowledge, were not in the city; and it being uncertain when they would be in the city, I therefore adjourned the further hearing until such time as the parties were ready to proceed; and having received no notice from them to that effect, nothing further has been done in the premises.

Respectfully submitted.

S. K. WOLFE,
Special Master.

The suggestions to which reference is made in the foregoing report, and to which I desire respectfully to call the attention of the court and the parties, are as follows:

From a cursory examination of the books and records of said railroad company in this city, and from the statement of Mr. Brooks, the present auditor in the office of the receiver, and of Mr. Lyman, who was the secretary of said company for some fifteen years, which statements were given under oath, I am entirely satisfied that it is almost wholly impracticable to make the examination of said books and records, and
188 elicit from them the facts contemplated in the orders of the court, without the power being conferred upon the master to appoint a clerk or "witness" to make such examination. The matters to be

examined are scattered through many large volumes, covering fifteen years of the business of said company, requiring much labor and skill in book-keeping to be brought into requisition in order to do them either accurately or expeditiously, each of which, I presume, is desirable in this case.

Such witness should have propounded to him in advance such written interrogatories as will, when answered, disclose all the facts such books and records will furnish. The witness can then go on and make such abstracts and tabular statements from the books as will enable him to accurately answer all of such interrogatories. He then can be sworn and examined by the parties before the master as any other witness, and his answers verified or otherwise by the books, as any other witness testifying to matters of which he has a knowledge.

Such witness should be a competent book-keeper, and a person familiar with, at least, the financial part of the railroad business, and his work should all be done under the supervision and direction of the master.

I will further suggest that it is hardly to be expected that an attorney who has the other qualifications necessary to enable him to discharge so important a trust as is committed to the master in this case would have either the time or inclination (even if he happen to have the book-keeping qualification of a first-rate book-keeper) to sit down to such mere clerical drudgery for several months to do that which can be better done by one whose business it is to do such work, and who could do it much better in less time and with less expense than any non-professional book-keeper.

These suggestions are made for the purpose of speeding the work. While such witness is making the examinations the master can be going ahead with the other branches of the account.

Respectfully,

S. K. WOLFE.

And afterwards, to wit, at the November term of said court, on the 9th day of November, 1871, before the honorable Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by counsel, and upon motion, the receiver
189 is directed to pay the sum of $500 to Messrs. Hughes, Huff and McDonald, as found due them by the master's report, heretofore filed in this cause.

And upon further motion, time is allowed the complainant to file exceptions to the master's report touching the claim of William Frame.

And upon further motion, upon coming in of the master's report, the semi-annual report of the receiver, No. 1, filed July 19, 1871, is approved.

And afterwards, to wit, in vacation of said court, on the 15th day of January, 1872, the following further proceedings in the above-entitled cause were had, to wit:

Comes now George H. Chapman, esq., the receiver herein, and files his second half-yearly report in the words following:

To the honorable judges of the circuit court of the United States for the district of Indiana:

George H. Chapman, receiver of the rights, franchises, property, and credits of the Louisville, New Albany and Chicago Railroad Company, appointed in the above-entitled cause, upon his oath says, that the an-

nexed statement, marked Exhibit A, contains a full, true, and complete account of his receipts and his disbursements from the first day of June, 1871, to the 31st day of December, 1871, inclusive.

GEO. H. CHAPMAN,
Receiver.

Subscribed and sworn to before me this fifteenth day of January, A. D. 1872.

J. D. HOWLAND, *Clerk.*

Receipts and disbursements made by George H. Chapman, receiver of the Louisville, New Albany and Chicago Railroad Company, for the months of June, July, August, September, October, November, and December, 1871:

Balance in general fund from May, 1871, account		$28,171 80
Balance in special fund, (Joy, receiver,) from May, 1871, account		2,798 50
Total balance from May, 1871, account		$30,970 30

RECEIPTS.

	From freight	$288,949 22	
190	From passengers	196,648 75	
	From mail	21,600 00	
From	express	12,827 33	
From	telegraph	2,049 50	
From	miscellaneous	5,686 54	
			$527,761 34
Total receipts			$558,731 64

DISBURSEMENTS.

For office and station expenses	$3,541 98
For train expenses	1,850 22
For oil, waste, and tallow	6,471 29
For repairs of cars	16,172 16
For repairs of engines	35,569 71
For buildings and fixtures	4,143 58
For bridges and culverts	9,335 74
For roadway	11,449 74
For new iron	14,307 93
For telegraph expenses	1,331 67
For stationery and printing	4,006 92
Eor legal expenses	4,999 55
For injuries to animals	4,793 05
For personal injuries	319 50
For earnings refunded	836 01
For taxes, rent, and insurance	410 07
For machine-shop expenses	1,693 69
For liabilities to operatives	289,030 13
For liabilities for wood	30 624 30
For liabilities for ties	11,340 42
For preparing wood	4 75

For bridge-tolls	1,813 22		
For railroads for freight	13,298 21		
For railroads for passage	12,354 23		
For engine and car mileage	4,928 74		
For interest, discount, and exchange	30 50		
For damage and loss on freight and baggage	554 96		
For locomotive service	4 38		
191 For wood	195 80		
For new construction	4 50		
	$485,416 60		
Amount paid to George H. Chapman, receiver, for salary and commissions from Dec. 1, 1870, to Nov. 30, 1861, inclusive, as allowed by the court	8,500 00		
		$493,916 60	
Balance on hand Dec. 31, 1871		$64,815 04	

And thereupon the same is referred to J. D. Howland, master, who will examine the same, and the vouchers and other evidence, touching the same, and make report thereon to the next term of this court.

And at the same time the said receiver files his petition for instruction herein, as follows: And the same having having been examined, the proposed settlement set forth therein to be made with the Jeffersonville, Madison & Indianapolis Railroad Company is approved, and the receiver is authorized and empowered to conclude the same.

And afterwards, to wit, at the November term of said court, on the 23d day of January, 1872, before the honorable Walter Q. Gresham, one of the judges, as aforesaid, of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the intervening defendants in this case, by Mr. Huff, their solicitor, and comes also the complainant, by Mr. Hendricks, his solicitor, and upon motion of the defendants aforesaid, it is ordered that they have leave to cross-examine George P. Fitch, George F. Talman, and George L. Schuyler, witnesses, whose depositions are on file, upon giving notice to the solicitors of the complainant.

And afterwards, to wit, in vacation of said court, on the 25th day of March, 1872, the following further proceedings in the above-entitled cause were had, to wit:

Comes now S. K. Wolfe, esq., special master herein, and files his report with sundry exhibits, in paper marked A, and also the evidence taken by him, in paper marked B.

And said report, exhibits, and evidence are in the words and figures following, to wit:

192 The undersigned, special master in chancery, herein, now submits to the court his final report:

1st. The amount of the entire property of the Louisville, New Albany and Chicago Railroad Company, covered by the decree of June 23d, 1858, and under said decree delivered into the hands of the late Douw D. Williamson, will appear in the copies of deeds of surrender, executed by said railroad company to said Williamson, and by Jesse J. Brown to said Williamson, referred to in the testimony of William H. Lewis, and marked therein as Exhibits D and E, which are filed with the testi

mony accompanying this report, to which copies of said deeds I refer, and make the same a part of this report. No testimony has been brought before me by the parties, to enable me to report more specifically in regard to that matter.

2d. The amount of moneys derived from said property in any manner, from the time the said Williamson assumed the trust under said decree of June 23d, 1858, to the time of taking the account, is seven million nine hundred and three thousand seven hundred and sixty-seven dollars, ($7,903,767.00.)

The above includes the period from October 1st, 1858, to September 3d, 1868, and was derived from the following sources:

Freights		$3,350,269 04
Passengers		3,535,171 65
Express		146,934 10
Mail		265,977 94
Earnings per division		248,660 44
Telegraph		196 11
Military		7,797 32
Miscellaneous		610 00
Earnings, total		$7,555,616 60
To which add receipts:		
Old claims		70,281 99
Bills payable		6,823 84
Switch and car keys		1,095 00
Montgomery County bonds		100,000 00
Passage and hand cars sold		1,245 00
Machinery sold		2,725 00
Telegraph subscription		986 35
Disc't C. & W. bonds		1,475 00
193 Real estate		735 35
Michigan Central Railroad Company		78,673 35
Disc't and exchange		3,537 54
Bills payable		34,001 39
Construction for Mooresville arch, sold		10,000 00
Disc't on account of bonds		8,657 50
Use of road		1,500 00
For amount charged in running expense, etc		18,714 97
Amount of estimated earnings taken up first year		7,698 12
Total receipts from October 1st, 1858, to September 30th, 1868		$7,903,767 00
In addition to this there was received by James F. Joy, while he had the road in his hands, covering the period from October 1st, 1868, to December 31st, 1870, the sum of		$466,195 56
And during the period from June 1st, 1869, to Nov. 30th, 1870, there was received by the Louisville, New Albany & Chicago Railway Company, the sum of		1,188,873 37
Showing total receipts from October 1st, 1858, to December 31st, 1870		$9,558,835 93

No evidence has been introduced to show the receipts since last-named date.

3d. The amount of all the earnings of said road:

Whole earnings from October 1st, 1858, to September 30th, 1868, while Williamson had said road in his hands	$7,555,616 60
Whole earnings from October 1st, 1868, to December 31, 1870, during the time James F. Joy had said road in his hands	466,195 56
Whole earnings from June 1st, 1869, to November 30th, 1870, during the time the road was in the hands of the Louisville, New Albany & Chicago Railway Company.	1,188,873 37
Showing total earnings of said road from October 1st, 1858, to December 31st, 1870	$9,210,685 53

There is no proof introduced showing the earnings of said road since the last-named date.

194 4th. The amount of all expenditures and disbursements made respecting said property and the trust aforesaid, during the same period, to wit, from October 1st, 1858, to December 31st, 1870:

Whole amount of disbursements during the time Williamson had said road in his hands, covering the period from October 1st, 1858, to September 30th, 1868	$7,784,074 06
Whole amount of disbursements during the time Joy had said road in his hands as aforesaid	585,888 50
Whole amount of disbursements during the time said road was in the hands of said railway company as aforesaid.	1,188,873 37
Total	$9,558,835 93

The testimony does not show anything in regard to the disbursements since the date December 31st, 1870.

5th. The amount of bonds now outstanding against said company, of the several series, with the interest thereon.

Of the 10 per cent. bonds, series February 8th, 1851, there are outstanding and unpaid, as follows:

Principal	$500,000 00
Coupons on the same	481,200 00
Interest on unpaid coupons	172,835 00
Interest on bonds 1869, 1870, and 1871, after-due	34,500 00
Interest on bonds due 1872 and 1873, after October 1st, 1871, date of last coupons computed	8,332 75
	$1,196,868 00

Of the 8 per cent. bonds, series February 14th, 1852, there are outstanding as follows:

Principal	$2,311,000 00
Coupons on the same	1,931 240 00
Interest on coupons	690,060 00
Total bonds, coupons, and interest	$4,932,300 00

The above two series are known on the books of the company as the first-mortgage bonds, and together amount to the sum of six million one hundred and twenty-nine thousand one hundred and sixty-

195 eight dollars, ($6,129,168.00,) which sum, by the written admission of H. Crawford, solicitor for trustee and bondholders, on file with the evidence herein, is subject to the following credits:

For money paid out during the railway company to the bond creditors	$180,000 00
For money paid on request of the bondholders on account of Michigan City Harbor Company	29,700 00
	$209,700 00
Balance bonds, coupons, and interest	$5,919,468 00

Of the 7 per cent. bonds, series November 3d, 1853, there are outstanding as follows:

Principal	$80,500 00
Coupons, (estimated as above)	84,525 00
Interest on coupons, (estimated as above)	37,503 34
Total	$202,528 34

On the 10 per cent. income-bonds, series December 21st, 1856, there are outstanding as follows:

Principal	$80,153 87
Coupons, (estimated on the basis of 8 coupons $50), unpaid from June 1st, 1857, to December 1st, 1860, for each $1,000	32,490 00
Interest on coupons, (estimated on the above basis)	22,093 20
Interest on bonds after due, at 10 per cent., from December 1st, 1860, to April 1st, 1872	88,169 25
Total	$222,906 32

Showing total amount of said several series of bonds, coupons, and interest (part estimated as above) to be as follows:

Series February 8th, 1851	$1,196,868 00
" February 14th, 1852	4,932,300 00
" November 3d, 1853	286,712 40
" February 1st, 1855	202,528 34
" December 21st, 1856	222,906 32
Total	$6,841,315 06

Of the bonds of the series of November 3d, 1855, one being No. 156, for $1,000, 30 coupons thereon of $35 each, and interest on coupons, $465.88; total, $2,515.88, belongs to Gideon Putnam.

196 And bonds of the series known as income-bonds, Nos. 70, 76, 194, 559, of $500.00 on each, amounting in the aggregate, including unpaid coupons and interest, to $5,610.66; and of the series of November 3d, 1853, eight 7 per cent. bonds of $1,000 each, with the unpaid coupons and interest, being Nos. 24, 40, 234, 391, 392, 393, 397, and 756, amounting in the aggregate to $20,127.04; and of the series of February 1st, 1855, 7 per cent. bonds, nine bonds of $1,000 each, being Nos. 209, 210, 235, 236, 405, 646, 647, 649, and 650, with the unpaid coupons and interest, amounting in the aggregate to $22,447.95, belonging to Frank E. Shaw, Gideon Shaw, and Helen Shaw, making total amount belonging to them, $48,188.65.

Said bonds, of which the numbers above are given, are the only ones of either of said last-named series that were produced before me, and the amount thereof computed. All the other bonds of said series outstanding have been estimated, the same not having been produced be-

fore me, the estimate being based upon the amount of those which were produced before me.

Of the series of Feb. 8, 1851, being Nos. 1 to 500 inclusive, of $1,000 each, all were produced before me, and the amounts computed, except Nos. 143, 148, 175, 196, and 209, the amounts of which are estimated upon the basis of the others.

Of the series of Feb. 14, 1852, being Nos. 1 to 2,000, inclusive, for $1,000 each, all were produced before me, and amounts computed, except Nos. 5, 93, 97, 250, 449, 618, 620, 631, 775, 809, 893, 894, 895, 1017, 1032, 1033, 1086, 1087, 1089, 1107, 1215, 1388, 1614, 1615, 1616, 1617, 1627, 1629, 1631, 1632, 1633, 1634, 1893, 1910, 1903, 1956, and 1965. And of same series of bonds for $500 each, Nos. 1 to 650, except 95, 152, 213, 220, 225, 226, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 339, 264, 265, 314, 343, 348, 355, 362, 555, and 649, which were estimated (after deducting the amount of 14 bonds for $1,000 each, with the coupons and interest, which have been surrendered) on the basis of the amounts of those which were produced before me.

6th. The amount of all other liabilities of said company and the nature thereof. No proof or evidence of any other liabilities of said company has been produced before me.

7th. The amount of the entire assets of said company, including its road and all its other property. There was no evidence produced before me directed specially to said matter. The deeds of sur-
197 render to Williamson, already referred to, show the property which came into his hands at their respective dates; and the schedule referred to, in the evidence of W'm N. Mahon, show property belonging to said company; but for the want sufficient evidence I am unable to report the "amount of the entire assets of said company."

8th. The amount of the property covered by each of the mortgages executed by the company to secure the said several series of bonds. The only evidence produced before me relative to that matter, was the verbal agreement of the attorneys, John H. Stotsenberg, esq., for the complainants, and S. A. Huff, esq., for the intervening defendants, that the property covered by each of said mortgages is correctly described in the copies thereof as printed in the printed record of the "White County suit." No evidence was introduced from which I am enabled to report as to the existence or non-existence, condition, amount, or value of said mortgaged property at the present time.

9th. The amount of the capital stock of said company, discriminating between the original subscription to said capital stock and the stock issued under the agreement embraced in the decree of December 16, 1858.

The amount of the original subscription to the capital stock of said company was	$2,525,223 96
Amount of original stock surrendered under said decree and converted into the new stock of said company	1,395,811 89
Amount of original capital stock surrendered	$1,129,412 07
The amount of new stock issued under said decree	$2,058,032 91

Said new stock was issued upon the surrender of the following bonds and original stock of said company, to wit:

Of the 7 per cent. bonds	$1,698,700 00
Of the income-bonds, (10 per cent.)	322,302 87

Of the construction 6 per cent. bonds	6,380 00
Of the old stock, $1,395,811.89, at 10 cents on the dollar, making	139,581 18
Total bonds and 10 per cent. on stock surrendered	$2,166,964 05

198 Which shows that there have been surrendered of bonds and stock $108,931.14 more than the amount of new stock issued. Whether said discrepancy may be explained by the fact that parties who have made surrenders of bonds or stock are yet entitled to have said amount of new stock issued to them, does not appear from the evidence. If such be the fact, the amount of new stock issued, and to be issued, would be $2,166,964.05, instead of $2,058,032.91, as above stated.

The above nine separate matters of accounts seems to cover all of the matters referred to me; yet, as somewhat connected with some of said matters, and as not clearly excluded by the spirit of the order of the court, at the request of the counsel of the intervening defendants, I also permit an investigation of the books, etc., of said company, to be made by W'm N. Mahon, the clerk appointed by me under an order of the court, with the view of ascertaining the following additional facts, which are appended to this report and made a part thereof, if in the opinion of the court they fall within the authority conferred upon the master by the order of the court.

1. On the 8th day of February, 1851, said railroad company owned of iron rails and machinery, the following:

Iron rails, (flat,) of the value of	$80,426 85
Locomotives, of the value of	17,343 51
Machinery, of the value of	14,355 58
Passage-cars, of the value of	5,713 51
Freight-cars	12,582 61
	$130,422 06

2d. Between the periods, March 25, 1851, and April 18, 1853, said company purchased of iron T-rail, chairs and spikes, and locomotives, to the value of $201,191.01, but whether the same were purchased with the bonds or the proceeds of the bonds then on the market the proof does not disclose.

3d. On the 14th day of February, 1852, said company was the owner of iron rails, locomotives, gravel-cars, passenger-cars, freight-cars, machinery, chairs and spikes, of the value of $331,613.47, but the proof does not show with what funds, or how the same were purchased. During the time that the first two series of bonds were being sold,
199 said company received from other sources $215,000, and purchased of iron rails, locomotives, cars, &c., to the value of $776,849.21.

4th. On the 3d day of November, 1853, said company owned of iron rails, locomotives, machinery, cars, &c., of the value of $1,238,281.12, but with what funds purchased the proof does not show.

5th. On the 1st day of February, 1855, said company owned iron rails, machinery, locomotives, cars, &c., of the value of $2,105,076.07, but the proof does not show with what funds the same were purchased.

By the direction and on the request of H. Crawford, solicitor for the complainants, the evidence taken herein was by me reduced to writing,

fore me, the estimate being based upon the amount of those which were produced before me.

Of the series of Feb. 8, 1851, being Nos. 1 to 500 inclusive, of $1,000 each, all were produced before me, and the amounts computed, except Nos. 143, 148, 175, 196, and 209, the amounts of which are estimated upon the basis of the others.

Of the series of Feb. 14, 1852, being Nos. 1 to 2,000, inclusive, for $1,000 each, all were produced before me, and amounts computed, except Nos. 5, 93, 97, 250, 449, 618, 620, 631, 775, 809, 893, 894, 895, 1017, 1032, 1033, 1086, 1087, 1089, 1107, 1215, 1388, 1614, 1615, 1616, 1617, 1627, 1629, 1631, 1632, 1633, 1634, 1893, 1910, 1903, 1956, and 1965. And of same series of bonds for $500 each, Nos. 1 to 650, except 95, 152, 213, 220, 225, 226, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 339, 264, 265, 314, 343, 348, 355, 362, 555, and 649, which were estimated (after deducting the amount of 14 bonds for $1,000 each, with the coupons and interest, which have been surrendered) on the basis of the amounts of those which were produced before me.

6th. The amount of all other liabilities of said company and the nature thereof. No proof or evidence of any other liabilities of said company has been produced before me.

7th. The amount of the entire assets of said company, including its road and all its other property. There was no evidence produced before me directed specially to said matter. The deeds of sur-
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Of the construction 6 per cent. bonds	6,380 00
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Total bonds and 10 per cent. on stock surrendered	$2,166,964 05

198 Which shows that there have been surrendered of bonds and stock $108,931.14 more than the amount of new stock issued. Whether said discrepancy may be explained by the fact that parties who have made surrenders of bonds or stock are yet entitled to have said amount of new stock issued to them, does not appear from the evidence. If such be the fact, the amount of new stock issued, and to be issued, would be $2,166,964.05, instead of $2,058,032.91, as above stated.

The above nine separate matters of accounts seems to cover all of the matters referred to me; yet, as somewhat connected with some of said matters, and as not clearly excluded by the spirit of the order of the court, at the request of the counsel of the intervening defendants, I also permit an investigation of the books, etc., of said company, to be made by W'm N. Mahon, the clerk appointed by me under an order of the court, with the view of ascertaining the following additional facts, which are appended to this report and made a part thereof, if in the opinion of the court they fall within the authority conferred upon the master by the order of the court.

1. On the 8th day of February, 1851, said railroad company owned of iron rails and machinery, the following:

Iron rails, (flat,) of the value of	$80,426 85
Locomotives, of the value of	17,343 51
Machinery, of the value of	14,355 58
Passage-cars, of the value of	5,713 51
Freight-cars	12,582 61
	$130,422 06

2d. Between the periods, March 25, 1851, and April 18, 1853, said company purchased of iron T-rail, chairs and spikes, and locomotives, to the value of $201,191.01, but whether the same were purchased with the bonds or the proceeds of the bonds then on the market the proof does not disclose.

3d. On the 14th day of February, 1852, said company was the owner of iron rails, locomotives, gravel-cars, passenger-cars, freight-cars, machinery, chairs and spikes, of the value of $331,613.47, but the proof does not show with what funds, or how the same were purchased. During the time that the first two series of bonds were being sold,
199 said company received from other sources $215,000, and purchased of iron rails, locomotives, cars, &c., to the value of $776,849.21.

4th. On the 3d day of November, 1853, said company owned of iron rails, locomotives, machinery, cars, &c., of the value of $1,238,281.12, but with what funds purchased the proof does not show.

5th. On the 1st day of February, 1855, said company owned iron rails, machinery, locomotives, cars, &c., of the value of $2,105,076.07, but the proof does not show with what funds the same were purchased.

By the direction and on the request of H. Crawford, solicitor for the complainants, the evidence taken herein was by me reduced to writing,

and the same, with the exhibits referred to therein, is filed herewith. The statements of facts filed before me by the parties, is also herewith filed.

In pursuance of an order of the court, and in order to facilitate the taking of the accounts herein, I appointed William M. Mahon as my clerk, who was necessarily engaged during sixty days, and in order to hasten the work I directed him to work each day until 10 o'clock at night, which makes the time employed by him equal to ninety days, for which he would be allowed by the court.

The time employed by me has been over six months, a part of the time including work at night. My cash expenses, including travel, expressage, telegraph, stationery, &c., incident to the work and necessarily expended, have been $75. For all of which the court is asked to make the proper allowance.

All of which is respectfully submitted.

S. K. WOLFE,
Special Master, &c.

MARCH 22, 1872.

A.—*Detailed statement of earnings and receipts of the Louisville, New Albany & Chicago Railroad from October 1, 1858, to October 1, 1868.*

Classification.	From October 1, 1858, to October 1, 1859.	From October 1, 1859, to December 31, 1860.	From January 1, 1861, to December 31, 1861.	From January 1, 1862, to December 31, 1862.	From January 1, 1863, to September 30, 1864.	From October 1, 1863, to September 30, 1864.	From October 1, 1864, to October 1, 1865.	From October 1, 1865, to September 30, 1866.	From October 1, 1866, to September 30, 1867.	From October 1, 1867, to September 30, 1868.
Freights	$214,680 65	$339,309 58	$201,489 90	$192,493 18	201,265 05	505,504 36	544,558 65	409,487 06	364,768 38	376,712 23
Passage	252,395 47	399,958 11	166,365 58	160,176 86	161,330 83	504,051 13	753,018 28	512,306 45	330,346 30	355,222 64
Express	13,750 00	15,000 00	11,711 08	11,171 04	8,663 68	11,781 68	13,452 66	12,356 67	20,248 75	28,798 54
Mail	28,800 00	38,266 69	28,800 00	28,800 00	18,000 00	25,920 00	25,920 00	25,920 00	22,436 25	23,125 00
Earnings, north division			23,899 97	111,074 91	113,685 56					
Telegraph										196 11
Military										7,797 32
Miscellaneous										610 00
Total earnings	509,626 12	732,534 38	432,266 53	503,715 99	502,945 12	1,047,257 17	1,336,949 59	960,070 18	737,789 68	792,461 84
OTHER RECEIPTS.										
Old claims	55,575 09	9,783 89	1,198 30	2,201 81	1,023 65	499 25				
Bills payable	5,607 29	1,216 55						10,000 00	24,001 39	
Switch and car keys		625 00	80 00	140 00	12 50	202 50	35 00			
Montgomery County bonds			21,000 00		74,000 00		4,000 00			1,000 00
Passenger and hand cars sold				1,245 00						
Machinery sold				500 00	2,225 00					
Telegraph sub		914 85	1 50	70 00						
Discount C. & W. bonds				1,475 00						
Real estate				325 00	200 00	210 35				
Michigan Central Railroad Company						13,970 29	33,292 24	31,410 82		
Discount and exchange							3,404 00		83 35	44 29
Construction for sale of Mooresville B'r										10,000 00
Profit and loss, (discount,) 8 per cent. bonds redeemed										8,657 50
Use of road										1,500 00
Materials for this amount, charged out in running expenses, and found by inventory to be on hand		18,714 97								
Total	570,808 50	763,789 64	454,546 33	509,672 80	580,406 27	1,062,139 56	1,377,681 73	1,001,481 00	761,879 42	813,663 63
Total receipts										$7,896,068 88

Total receipts		$7,896,068 88
Add profits assumed		7,698 12
		7,903,767 00
Total disbursements		7,784,074 06
Balance, profits and loss		119,692 94
Assets on hand October 1, 1868 :		
Cash	$47,544 55	
Due from Post-Office Department	5,781 24	
Due from American Express Company	150 00	
Due from Merchants' Union Express Company	2,115 01	
Due from Farmers' Loan and Trust Company	567 95	
Operative department	44,592 63	
Material per account	18,941 56	
		$119,692 94

202 *Detailed statement of disbursements of the Louisville, New Albany & Chicago Railroad, from October 1st, 1858, to October 1st, 1868.*

Classification.	From October 1, 1858, to September 30, 1859.	From October 1, 1859, to December 31, 1860.	From January 1, 1861, to December 31, 1861.	From January 1, 1862, to December 31, 1862.	From January 1, 1863, to September 30, 1863.	From October 1, 1863, to September 30, 1864.	From October 1, 1864, to September 30, 1865.	From October 1, 1865, to September 30, 1866.	From October 1, 1866, to September 30, 1867.	From October 1, 1867, to September 30, 1868.
Running expenses	$397,704 11	$652,310 07	$361,939 24	$291,674 36	$278,312 08	$673,154 32	$947,969 44	$784,080 35	$693,705 42	$623,994 85
Interest on trust-loan	12,031 86	13,604 41	12,222 00	12,222 00	9,160 20	2,267 22				
Interest on C. and W. bonds	6,636 99	9,927 00	6,295 50	5,256 50	1,378 05					
Expenses of trust	2,572 54	8,828 00	8,294 10	7,127 25	998 85	4,527 50	7,585 30	5,758 43	5,991 96	5,275 33
Old claims as shown in acct. of old co., due-bills, time and wood checks, j'dgm'ts, &c.	63,273 21	20,678 90	15,772 90	4,050 77	22 25	4,490 06	352 00	13,035 81	585 00	
Principal of trust-loan, judgments, &c.		25,400 00			110,600 00	64,000 00				
Construction		5,612 19	2,440 68	11,466 61	22,887 43					
Right of way and real estate		1,083 32	500 00	693 55		167 73				
Construction and telegraph		1,799 04	95 57							
Buildings		4,742 79	1,786 48	842 07	2,001 53					
Machinery and tools		6,931 33	1,097 21		400 00					
Passage, freight, and hand cars		5,162 65	17,290 84	6,500 00	68,540 12		107 78	25,212 23	268 01	
Discount and exchange		803 29	514 53	677 20	227 43	126 15		1,034 80	195 25	254 23
Switch and car keys		60 00	360 00	95 00	135 00	122 50	150 00	67 50	5 00	20 00

Engines		13,367 65	7,530 02				28,688 55	1,525 57	698 10	
Crawfordsville and Wabash bonds			21,000 00	14,000 00	135,000 00		4,000 00			1,000 00
Expenses, north division			6,515 09	28,313 50	29,283 73					
Bills payable			6,823 84							
New rails									10,000 00	24,001 39
Crawfordsville culvert				7,229 53	23,766 79		72,499 25	10,042 69		33,147 06
Bridges at Salt Creek, White River, and Pekin and Farrabees.				5,032 25	1,987 44					
				603 96	4,798 58					
Interest on 10 and 8 per cent. bonds						118,000 00	236,000 00	123,900 00		50 00
New freight-cars						27,386 24	22,696 71	91,984 58	13,961 22	
New buildings						2,711 54	2,290 73	8,614 49	1,176 53	
New bridges						34,690 11	34,810 43	50,574 03	23,512 14	
New fences						527 95	1,547 16	2,276 22	1,346 59	
Profit and loss, Log. P. and B. Railroad, Ind. State prison, bills receivable.							4,252 10			20,083 18
Michigan City Harbor Company								15,400 00	11,500 00	2,800 00
203 Michigan Central Railroad Company									8,111 60	21,207 05
Indianapolis & Vincennes Railroad Stock										5,000 00
Eight per cent. bonds										14,000 00
Kent, Crawford & Kent										16,000 00
George F. Talman										3,237 34
Ties										29,070 96
Bloomington depot										750 00
Total	482,225 71	770,310 64	470,478 00	395,784 55	689,499 48	932,171 32	1,362,949 45	1,133,507 70	771,256 82	775,891 39
Grand total										7,784,074 06

Filed with W. N. Mahon's answer to Questions Nos. 11 and 12 of his testimony.

S. K. WOLFE,
Special Master.

204 *Receipts and disbursements made by D. D. Williamson, trustee of the Louisville, New Albany & Chicago Railroad Company, for the year ending September 30th, 1859.*

RECEIPTS.		
From freights		$214,680 61
From passage		260,184 01
From express		13,750 00
From mail		28,800 00
		$517,414 66
For acceptances given for supplies, and to Ketchum, Coffin and others, for fees in U. S. court, (debts assumed)		5,607 25
From claims due old company and all other sources		63,273 25
		$586,295 16
From October 1st, 1859, to December 31st, 1860.		
Assets on hand at close of last fiscal year as above	$72,239 20	
Material purchased during current year in excess of former invoice	18,714 97	
		$90,954 17
From freight	339,309 58	
From passage	332,169 57	
From mail	38,266 69	
From express	15,000 00	
		724,745 84
Received from bills payable		1,216 53
Received from employés for car and switch keys		563 50
Received from claims due old company		9,783 41
		$827,265 45
From December 31, 1860, to December 31, 1861.		
Received from assets on hand at close of last fiscal year		$89,759 91
Received from freight	$201,489 90	
Received from passage	166,365 58	
Received from mail	28,080 00	
Received from express	11,711 08	
Received from earnings north division	23,899 97	
Total earnings		432,266 53

DISBURSEMENTS	
On account of ordinary expenses	$254,865 35
On account of extraordinary expenses	142,838 70
Expenses of trust	2,572 54
Interest on loan	12,038 86
Interest on Crawfordsville & Wabash bonds	6,636 99
Amount in hands of pay-clerk, for which returns were made Oct., 1859	31,830 25
On payment of open account	14,405 01
On account of right of way	12,408 88
On account of notes, due-bills, boarding, tickets, etc	4,747 19
On account of time-checks, road-checks, etc	31,712 13
Balance, equal to assets	72,239 20
	$586,265 16
From October 1st, 1859, to December 31st, 1860.	
For new engines, cars, etc	$37,784 12
Ordinary expenses	475,450 17
Extraordinary expenses	145,029 65
On principal of trust-loan	25,400 00
On interest of trust-loan	13,604 41
Expense of trust	8,828 00
Interest on C. & W. bonds	9,927 00
Discount and exchange	803 29
Tax and claims against old company	20,678 90
Balance, equal to assets	89,759 91
	$827,265 45
From December 31, 1860, to December 31, 1861.	
For new engine and cars	$30,739 30
For ordinary expenses	312,050 43
For extraordinary expenses	49,888 81
For expenses of north division	6,515 09
For expenses of trust	8,294 10
For interest on trust-loan	12,222 00
For interest on Crawfordsville and Wabash bonds	6,295 50
For discount and exchange	514 53
For bills payable	6,823 84
For operatives, for switch-keys	280 00

		$522,026 41

From December 31, 1861, to December 31, 1862.

From assets on hand at close of last fiscal year		$73,828 24
From freight	$192,493 18	
From passage	160,176 86	
From mail	20,800 00	
From express	11,171 04	
From earnings, north division	111,074 91	
Total earnings		513,715 99
Discount on Crawfordsville and Wabash bonds		1,475 00
Credit to contractor at Crawfordsville		963 08
Employés, for car and switch keys		45 00
		$580,027 31

From December 31, 1862, to September 30, 1863.

From assets on hand at close of last fiscal year		$188,679 57
From freight	$201,265 05	
From passage	161,330 83	
From mail	18,000 00	
From express	8,663 68	
For earnings, north division	113,685 56	
Total earnings		$502,945 72
Montgomery County bonds		74,000 00
Claims due old company		1,001 41
Money advanced by trustee for iron		12,809 66
Balance due contractor at White River bridge		1,295 05
		$780,730 80

For old company claims	14,574 60
For balance, equal to assets	73,828 24
	$522,026 44

From December 31, 1861, to December 31, 1862.

For new cars, &c	$17,362 23
For ordinary expenses	266,096 79
For extraordinary expenses	24,086 90
For excise tax	1,490 67
For discount and exchange	677 20
For new rails	7,229 53
For expence of north division	28,313 50
For expenses of trust	7,127 25
For interest on trust-loan	12,223 00
For interest on Crawfordsville and Wabash bonds	5,256 50
For old company claims	1,848 96
For implements at Pekin, etc	5,636 21
For Crawfordsville and Wabash bonds	14,000 00
For balance, equal to assets	188,679 57
	$580,027 31

From December 31, 1862, to September 30, 1863.

For ordinary expenses	$278,312 08
For masonry at White River bridge	4,000 00
For masonry at Salt Creek bridge	798 58
For embankment at Crawfordsville	1,997 44
For reconstruction of bridge	22,887 43
For new rails	23,766 79
For new box and platform cars	68,516 65
For expense of north division	29,283 73
For car and switch key account	122 50
For balance due contractor last year	963 08
For discount and exchange	227 43
For expense of trust	998 85
For interest on trust-loan	9,160 20
For interest on Crawfordsville and Wabash bonds	1,378 05
For Crawfordsville and Wabash bonds redeemed	135,000 00
For principal of trust-loan	110,600 00
Balance, equal to assets	92,727 99
	$780,730 89

Receipts and Disbursements.—Continued.

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RECEIPTS.

From September 30, 1863, to September 30, 1864.

Amount on hand at close of last fiscal year		$92,727 99
From freights	505,504 36	
From passage	504,051 13	
From mail	25,920 00	
From express	11,781 68	
Total earnings		$1,047,257 17
Received from sale of real estate		42 62
Received from McDonald & Porter, balance of account		443 86
Received from switch and car key account		80 00
Amount due Michigan Central Railroad Co		13,970 29
		$1,154,521 93

From September 30, 1864, to September 30, 1865.

Received from assets on hand at close of last fiscal year		208,091 52
From freight	544,558 65	
From passage	753,018 28	
From mail	25,920 00	
From express	13,452 66	
Total earnings		$1,336,949 59
George Bailey, open account		500 00
Discount and exchange		3,404 90
Due Michigan Central Railroad Co. for this year		33,292 24
		$1,582,238 25

From September 30, 1865, to September 30, 1866.

From assets on hands at close of last fiscal year		$223,323 80
From freights	$409,487 06	
From passage	512,306 45	
From mail	25,920 00	
From express	12,356 67	
Total earnings		960,070 18
Temporary loan		10,000 00
Amount due Michigan Central R. R. Co., on account of this year		31,410 82
		$1,224,804 80

DISBURSEMENTS.

From September 30, 1863, to September 30, 1864.

On account of ordinary expenses	$738,470 26
Discount and exchange	126 15
Expense of trust	4,527 50
George Bailey, balance on open account	500 00
Interest on 8 per cent. bonds	93,000 00
Interest on 10 per cent. bonds	25,000 00
Balance on trust-loan	64,000 00
Amount advanced by trustee	12,809 55
Crawfordsville embankment	1,295 05
Interest on trust-loan	2,267 22
Old company claims	4,434 67
Balance, equal to assets	208,091 52
	$1,154,521 93

From September 30, 1864, to September 30, 1865.

For ordinary expenses	1,118,195 35
Interest on 8 per cent. bonds	186,000 00
Interest on 10 per cent. bonds	50,000 00
Old company claims	352 00
Switch and car key account	115 00
Bills receivable, old company account	1,588 86
Logansport road	2,581 82
State prison	81 42
Balance, equal to assets	223,323 80
	$1,582,238 25

From September 30, 1865, to September 30, 1866.

For ordinary expenses	$981,103 39
For old company claims	13,035 81
For interest on 8 per cent. bonds	97,650 00
For interest on 10 per cent. bonds	26,250 00
For Michigan City Harbor Company	15,400 00
For switch and car key account	67 50
Balance, equal to assets	91,298 10
	$1,224,804 80

From September 30, 1866, to September 30, 1867.

From assets on hands at close of last fiscal year		$91,298 100
From freight	$364,768 38	
From passage	330,346 30	
From mail	22,426 25	
From express	20,248 75	
Total earnings		$737,789 68
Interest		88 35
Bills payable		24,001 39
		$853,177 52

From September 30, 1867, to September 30, 1868.

From assets on hand at close of last fiscal year		$81,920 70
From freight	$376,712 23	
From passage	355,222 64	
From mail	23,125 00	
From express	28,798 54	
From telegraph	196 11	
From military transportation	7,797 32	
From miscellaneous sources	610 00	
		$792,461 34
From interest		44 29
From use of road		1,500 00
Liabilities of operatives		37,208 33
Liabilities to individuals		151 65
Liabilities to fuel		13,343 00
Liabilities for ties		4,920 81
Total		$931,550 70

From September 30, 1866, to September 30, 1867.

For ordinary expenses	$741,055 22
For old company claims	585 00
For Michigan City Harbor Company	11,500 00
For temporary loan	10,000 00
For Michigan Central R. R. Co.	8,111 60
For switch and car key account	5 00
Balance, equal to assets	81,920 70
	$853,177 52

From September 30, 1867, to September 30, 1868.

Disbursed for ordinary expenses		$672,421 98
Liabilities prior to June 1, 1867		9,527 17
Bills payable		24,001 39
Profit and loss		39,895 48
Michigan Central Railroad Company on account		21,207 05
Indianapolis & Vincennes Railroad Company on account		5,000 00
Michigan City Harbor Company		2,800 00
Eight per cent. bonds		4,000 00
G. F. Talman acc't land		3,237 34
Bloomington depot		750 00
Interest on ten per cent. bonds		50 00
Switch and car key account		20 00
Fuel on hand		18,380 35
Ties on hand		567 00
Kent & Crawford acc't judgment		10,000 00
Balance equal to assets:		
Cash on hand	$47,544 55	
Cash with Farmers' Trust and Loan Company	567 95	
	48,112 50	
Due from Post-Office Department	5,781 24	
Due from agents and railroads	44,592 63	
Due from American Express Company	150 00	
Due from Merchants' Union Express Company	2,115 01	
	$100,751 38	
Material on hand	18,941 56	
		$119,692 94
		$931,550 70

208 *Receipts and disbursements made by James F. Joy, receiver of the Louisville, New Albany and Chicago Railroad Company, from October 1, 1868, to December 31, 1868.*

RECEIPTS.			DISBURSEMENTS.	
Cash from D. D. Williamson, trustee		$48,112 50	For ordinary expenses	$187,800 35
From freight earnings		112,079 39	For Bloomington depot	2,909 77
From passage earnings		83,919 79	For judgement of Kent, Crawford & Kent	10,000 00
From mail earnings		1,632 32	Balance, equal to cash on hand	51,999 04
From express earnings		9,354 83		
From telegraph earnings		610 33		
		$252,709 16		252,709 16
From January 1, 1869, to April 30, 1869.			From January 1, 1869, to April 30, 1869.	
From cash on hand		51,999 04	For ordinary expenses	217,678 62
From freight earnings	96,142 61		For Bloomington depot	269 05
From passenger earnings	109,618 35		For switch and car key account	10 00
From mail earnings	12,729 36		For liabilities of trustees	1,522 36
From express earnings	7,964 39		For judgment of Kent, Crawford & Kent	31,052 51
From telegraph earnings	628 76		Balance, equal to cash on hand	29,245 47
From engine and car hire	695 50			
		227,778 97		
		279,778 01		279,778 01
From May 1, 1869, to November 30, 1869.			From May 1, 1869, to November 30, 1869.	
From cash on hand		29,245 47	For ordinary expenses	116,000 35
From freight earnings	45,871 69		Balance, equal to cash on hand	15,005 16
From passenger earnings	39,968 39			
From mail earnings	9,200 80			
From express earnings	4,111 91			
From telegraph earnings	281 81			
From interest earnings	483 06			
From military transportation	342 92			
From miscellaneous sources	1,499 55			
		101,760 04		
		131,005 51		131,005 51
From November 30, 1869, to December 31, 1870.			From November 30, 1869, to December 31, 1870.	
From cash on hand		15,005 16	For ordinary expenses	13,131 99

209	From freight earnings	3,441 17	Michigan City Harbor Company	2,700 00
	From passenger earnings	59 04	Switch and car key account	15 00
	From engine and car hire	124 42	Receipt of G. H. Chapman, receiver	2,798 50
	From damages on freight	15 70		
		18,645 99		18,645 49

Earnings and expenses of the Louisville, New Albany and Chicago Railway Company from June 1, 1869, to November 30, 1870.

RECEIPTS.		DISBURSEMENTS.	
From freight earnings	$593,519 15	For ordinary expenses	$964,063 11
From passenger earnings	506,413 69	For building branch road	29,409 78
From mail earnings	43,200 00	Balance	195,400 48
From express earnings	31,026 81		
From telegraph earnings	4,290 21		
From miscellaneous sources	10,423 51		
	$1,188,873 37		$1,188,873 37

The complainant expects to prove the following facts before the master in this case:

That the entire property of the Louisville, New Albany and Chicago Railroad Company, covered by the decree of June 23d, 1858, as delivered to Douw D. Williamson, is described and embraced in the deed of surrender from said company to said Williamson, and in a certain quit-claim deed of Jesse J. Brown to said Williamson, the first dated October 6th, 1858, and the second of same date.

That the earnings of said railroad, and money from all sources in any manner derived from said property from the time Douw D. Williamson took it under said decree of June 23d, 1858, to the date of the order of accounting, amounted to $9,647,419.70.

That the expenditures and disbursements for the same period of time amounted to $9,629,220.70.

That the amount of bonds outstanding against said company is as follows:

Of the series of February 8th, 1851, 500 bonds, the principal of which amounts to $500,000, and the interest due and unpaid thereon to $600,000.

And of the series of February 14th, 1852, 2,636 bonds, the principal of which amounts to $2,311,000, and the interest due and unpaid thereon to $2,600,000.

And of the series of November 3d, 1853, and of February, 1855, the amount of principal is $196,500, and interest due and unpaid is $160,000.

And of the series of December 21st, 1856, the amount of principal is $80,153.87, and interest due and unpaid is $85,000.

That the other liabilities of said company outstanding are certain bonds drawing 6 per cent., amounting to the sum total in principal of $6,420, the said bonds being wholly unsecured, and not a lien upon any part of said property.

That all the assets of said company, its road, and all other property, are embraced in the deeds of said company to said Williamson, the deed of Jesse J. Brown above recited, and the inventory of the receiver, Chapman.

That the original capital stock of said company in full shares was $2,476,250, and in fractional shares $48,973.96, making $2,525,-
211 223.96; that the new stock in full shares was $2,049,600, and in fractional shares was $8,432.91, making $2,058,032.91; that there were surrendered of the 7 per cent. bonds, $1,698,700; of the 10 per cent. income-bonds, $322,302.87, and of unsurrendered old stock there was $1,129,412.07, all of which complainant stands ready to prove.

HENDRICKS, CRAWFORD, &c.,
For Complainant.

To Hon. Simeon K. Wolfe, special master in the above-entitled cause:

John Savage Shaw and the other intervening defendants, who, by leave of the court, have filed their answer in said cause, in obedience to your order that the said intervening defendants, as well as the complainant, shall file before you a written statement of the matters of account to be taken by you as to said defendants, under the order of reference to you as special master, make the following statement, protesting, however, that, under the rules of practice in chancery in said court, the master has no power to require such statement, any further than as

appears in the record of the pleadings in said cause; and further protesting that such statement, under such rules, could not be required at the hands of the said intervening defendants, after the examination before the master had been entered upon and partially made; and further protesting that the master, under such rules, cannot by reason of his said order, and the filing of this statement in obedience thereto, circumscribe or limit the said intervening defendants, as to the matters of inquiry under the order of reference, if they, the said intervening defendants, shall see fit, or find it material to go beyond what may be contained in this statement; and so protesting, the said intervening defendants respectfully state—

That they propose to establish that the said defendant, John Savage Shaw, is the holder and owner of one of the bonds for one thousand dollars, secured by the mortgage executed by the New Albany and Salem Railroad Company, of date November 3, 1853, and one bond of like amount, of February 1, 1855, and is also the holder and owner of stock in said company, derived from the conversion of the bonds of said company.

That the said intervening defendant, Gideon Putnam, is the holder and owner of one of the bonds for one thousand dollars, secured by the mortgage of said company, of February 1, 1855, and of stock in the said company, derived from the conversion of the bonds thereof.

That the said intervening defendants, Frank E. Shaw, Gideon
212 Shaw, and Helen Shaw, children of Robert Shaw, deceased, are the holders and owners of bonds secured by the mortgages subsequent to that of 1852, to the amount of $20,500, exclusive of interest.

And that all the other intervening defendants are the holders and owners of stock in the said company, derived from the conversion of the bonds thereof.

That the bonds so held and owned by the said intervening defendants, with the coupons for unpaid interest, thereon are entitled to priority in payment, as to the property covered by the mortgages given to secure them not covered by the mortgages given to secure the 10 per cent. and 8 per cent. bonds of the said company; and that the property so mortgaged and not covered by the said 10 per cent. and 8 per cent. mortgages, consists of iron rails and other materials and machinery not owned by said company at the date of the mortgage given, February 14th, 1852, nor purchased or paid for with said bonds secured thereby, or with money obtained therefor, or with the said 10 per cent. bonds, or with money obtained therefor, and that the same is amply sufficient for the payment of all the outstanding bonds secured by mortgages subsequent to that of February, 1852.

As to the said 10 per cent. and 8 per cent. bonds, the said intervening defendants expect to establish, by competent testimony, that the holders thereof, as far as the same are represented by George F. Talman and his associates, have no right to any relief in the present suit, on account of the fraudulent practices of the said holders, as more specifically stated in the answer of the said intervening defendants, a copy of which answer is herewith filed, and especially brought before you as the special master herein; and that only the holders of said 10 per cent. and 8 per cent. bonds not represented by the said George F. Talman, and his said associates, have any right to claim any lien, right, or priority as to the property covered by the said 10 per cent. and 8 per cent. mortgages.

The said intervening defendants expect to furnish evidence to enable you to take the account of the property covered by the respective mort-

gages of 1851, 1852, 1853, 1855 and 1856, and to that end have placed in your hands interrogatories to be propounded to the witnesses George Lyman and others.

They also propose to show, in the matter of the account of the property of the company, placed in the hands of the trustee, under the
213 decree of June, 1858, that that portion of the line of said company's road, known as the Gosport branch, extending from the town of Gosport to Indianapolis, was so placed in said trustee's hands, and that the same still belongs to said company, and is of great value, including, as it does, the right of way secured, and a large amount of earthwork and masonry, done thereon by the said company, prior to said decree of June, 1858.

In the account of the earnings and expenditures of the company's road, the said intervening defendants expect to produce evidence to show that divers sums of money, amounting, in the aggregate, to several hundred thousand dollars, were paid out and squandered during the time the property and franchises of the company were nominally in the possession of one James F. Joy, but actually held and controlled by the said George F. Talman, and his associates, for purposes not within the legitimate outlays of the business of the road, and in violation of the trusts under which the property was placed in the hands of Williamson, under the decree of June, 1858, and not within any of the powers contained in the mortgages executed by the company; that some of such expenditures were in payment of claims subordinate to the liens of the mortgages of 1853, and subsequent thereto, and that some of such expenditures were outlays incident to the litigation in the White common pleas court, instituted by said Williamson at the instance of said Talman and his associates, whereby they sought to acquire the title to the property and franchises of said company by fraud.

The said intervening defendants expect to show that the sum of over $50,000 was paid on a judgment of the White common pleas court, in favor of Phineas M. Kent, Bela C. Kent, and Henry Crawford, against said company, and that said payment was made from the funds of the company, not applicable thereto, at the instance of the said Talman and his associates, under a fraudulent agreement and arrangement, whereby the company, with its franchises, was placed at the mercy of a band of conspirators formed and operating in the city of New York, and that the expenditures so made ought to be charged against the said Talman and his associates.

The intervening defendants expect to prove, in the matter of the account of expenditures, that a large sum, to wit, about one hundred thousand dollars of the road's earnings, was expended by the said
214 Talman and his associates in the purchase of real estate in the city of New Albany, and of the right of way for a line of road from the original line of said company's road, to a point in said city of New Albany, forming a junction with the Jeffersonville, Madison & Indianapolis Railroad, and in the construction of a railroad upon the line, the right of way for which was so purchased, and that the expenditures so made was in violation of the trusts declared in the decree of June, 1858, and of those declared in the several mortgages of the New Albany & Salem Railroad Company.

They also expect to show that a large amount of money, to wit, two hundred thousand dollars of the earnings of the road, have been, by the action of the said Talman and his associates, carried away to the city

of New York, and converted and appropriated to their own use without authority.

JAMES HUGHES, S. A. HUFF,
M. M. RAY, J. E. McDONALD,
Solicitors for Intervening Defendants.

(Here follows joint answer of John Savage Shaw et al. See page 61.)

Minutes of evidence in the above-entitled cause now pending in the United States circuit court for the district of Indiana, taken before S. K. Wolfe, special master in chancery, in the matters of account refered to him, by the order of said court, to wit:

AUGUST 24TH, 1871.—Pursuant to notice given to the parties, that is to say, to Henry Crawford, esq., Hendricks, Hord & Hendricks, esq'rs., counsel for said complainant; and McDonald, Butler & McDonald, esq'rs., M. M. Ray, esq., James Hughes, esq., and S. A. Huff, esq., and at their request, the taking of the account herein was begun before said master at his office, over No. 103 Pearl street, in the city of New Albany.

Said John Savage Shaw et al. produced before the master, as a witness, GEORGE LYMAN, who, being duly sworn as required by law, testified as follows:

1. Interrogatory by Shaw et al. State what relation you have at any time borne to the New Albany and Salem Railroad Company; how long such relation continued; what relation you have borne to the Louisville, New Albany & Chicago Railroad Company, and when such relation began and terminated; and what, if any, relation you have borne to a company claiming the corporate name of the Louisville, New Albany & Chicago Railway Company. Could you, from the
215 books and records of the New Albany and Salem Railroad Company, and those of the Louisville, New Albany & Chicago Railroad Company, ascertain and state the true account of the original capital stock of the New Albany and Salem Railroad Company? If you can, and you have access to the means of doing so, please make such statement.

Answer. From the spring of 1848 until the spring of 1867, I was secretary of the New Albany and Salem Railroad Company, and the Louisville, New Albany & Chicago Railroad Company, which was the same corporation under different names. I have never been connected with the company known as the Louisville, New Albany & Chicago Railway. I could, if I had access to the books of the New Albany and Salem Railroad Company, and of the Louisville, New Albany & Chicago Railroad Company, ascertain the amount of the orig'nal capital stock of said railroad company.

And because said other parties are not present, and it not appearing that they received the notice sent to them by mail, the further proceedings herein is adjourned by the master until the 8th day of September, 1871, at 10 o'clock a. m., at the same place, and that further notice be given to said non-appearing parties; which notice was accordingly given.

SEPTEMBER 8, 1871.—The further proceeding herein is resumed. Present, M. M. Ray, counsel for John Savage Shaw et al. And it appears from the acknowledgment endorsed on the notice issued herein of the further proceedings herein, that Hendricks, Hord & Hendricks are duly noticed by the reception of said notice, on the 28th day of August, 1871.

The examination of the witness, George Lyman, was postponed to another day, and at the request of attorneys for defendants the further hearing hereof is adjourned until the 22d day of September, 1871, at the same place.

SEPTEMBER 22, 1871.—Comes now said plaintiff, by Thomas A. Hendricks, esq., his attorney, and come said defendants, by S. A. Huff, esq., their attorney, and said defendants introduced as a witness E. J. Brooks.

And the said E. J. BROOKS, being duly sworn, testified as follows:

At the request of said defendants' counsel, the taking of the testimony of E. J. Brooks is postponed to a future day.

And by agreement of parties, the further hearing herein is adjourned until the 4th day of October, 1871, at the office of Hendricks, Hord & Hendricks, at the city of Indianapolis.

216 OCTOBER 4, 1871.—The master appeared in pursuance of last adjournment, at the office of Hendricks, Hord & Hendricks, at Indianapolis, ready to proceed in taking said account, but the parties not being ready, the further hearing thereof was adjourned until such time as the master shall be notified that the defendants are ready to proceed.

DECEMBER 14, 1871.—Now, in pursuance of notice, comes said plaintiff, by J. H. Stotsenberg, esq., his attorney, and said defendants come by S. A. Huff, esq., their attorney, and the hearing hereof is resumed at my office, in the city of New Albany.

The examination of E. J. Brooks, a witness produced by the defendants, being resumed, said witness testified as follows:

Question 1. Who is the present custodian of the books and correspondence of the Louisville, New Albany and Chicago Railroad Company?

Answer. I am, as agent of the receiver.

Q. 2. Your attention is called to a letter-book now shown you. Please state for what purpose and on whose behalf the correspondence contained in that book occurred, and the period of time such correspondence covers.

A. This book contains copies of letters in the secretary's and treasurer's office of the Louisville, New Albany and Chicago Railway Company, covering a period from June the 12th, 1869, to June the 10th, 1870, inclusive. This book contains all the letter-press copies in relation to railroad business during that period.

Q. 3. By whom were the letters thus copied on pages 23, 24, 34, 65, 75, and 478 written, and what relation did the person who wrote them bear to the said railway company?

A. Those five letters were written by W. H. Lewis, the secretary and treasurer of the Louisville, New Albany & Chicago Railway Company.

Q. 4. Are you acquainted with the handwriting of the said W. H. Lewis?

A. Yes, sir, I am.

Q. 5. In whose handwriting do the letters referred to appear to have been written?

A. In the handwriting of W. H. Lewis.

And the further examination of said witness is postponed to a future day.

And thereupon said defendant introduced in evidence the copies

217 of said letters referred to in the above questions, No. 3, which being copied from said letter-press book, read in the words and figures following, to wit:

The letter on pages 23 and 24 is as follows:

JULY 13, '69.

M. A. MALOTT, Esq., *Bedford, Ind.:*

DEAR SIR: The gentlemen who purchased our road at the recent sale, and who were large bondholders, have organized a new company, which is now operating the property. They have fixed the capital stock at three millions, and have converted their bonds into it at the rate of 120 for the 10 per cent., and par for the 8 per cent. They extend the same privilege to other holders who may accept it before August 1, '69; after that date the bonds remaining out will be worth only their proportion of $100,000, the amount for which the road was sold.

If you wish to convert your bonds into stock in the new company, you can forward them to me and I will send them with others to New York, where the new stock will be issued.

Yours, respectfully,

W. H. LEWIS, *Secretary.*

The letter on page 34 is as follows:

JULY 24, 1869.

M. A. MALOTT, Esq., *Bedford, Ind.:*

DEAR SIR: Your favor of the 23d inst., covering 10 per cent. bonds, Nos. 264, 266, and 270, is received. The stock will be issued in New York at any early day, and the certificate forwarded.

Yours, respectfully,

W. H. LEWIS, *Secretary.*

The letter on page 65 is as follows:

AUGUST 2, 1869.

M. A. MALOTT, Esq., *Bedford, Indiana:*

DEAR SIR: Inclosed I hand you certificates of stock in this company, as below:

No. 100, A. J. Williams, trustee	12 shares.
No. 15, A. J. Williams, trustee	$50 scrip.
No. 100, T. C. Williams, trustee	12 shares.
No. 16, T. C. Williams, trustee	$50 scrip.
No. 102, E. D. Pearson, trustee	12 shares.
No. 17, E. D. Pearson, trustee	$50 scrip.

218 As you will notice, $125 in stock has been issued for each $100 in bonds surrendered, which we think a very favorable arrangement for the holders.

Please acknowledge the receipt of the certificates.

Yours, truly,

W. H. LEWIS, *Secretary.*

The letter on page 75 is as follows:

AUGUST 10, 1869.

M. A. MALOTT, Esq., *Bedford, Indiana:*

DEAR SIR: On the 2d inst. I sent you certificate of stock and scrip for A. J. Williams, trustee, T. C. Williams, trustee, and E. D. Pearson, trustee, in place of three ten per cent. bonds previously forwarded by you. I am notified by our transfer-agent that there were two unpaid coupons attached to each bond, for which I now hand you two hundred and ninety-two dollars and fifty cents, ($292.50,) viz:

Six coupons, $50 each	$300 00
Less Government tax	7 50
	292 50

Making $97.50 for each of the above-named parties.

Please acknowledge the receipt of this remittance, and also of the certificates previously forwarded.

Yours, truly,

W. H. LEWIS, *Secretary.*

The letter on page 478 is as follows:

MAY 26,

M. A. MALOTT, Esq., *Bedford, Indiana:*

DEAR SIR: Inclosed I hand you the checks for $36 each, drawn by the Farmers' Loan & Trust Company, of New York, to the order of A. J. Williams, trustee, Thomas C. Williams, trustee, and E. D. Pearson, trustee, the same being dividend on their shares in our stock declared February 5, 1870, viz, 3 per cent. on full shares.

Please have them sign the inclosed orders and return them to me.

Yours, truly,

W. H. LEWIS, *Secretary.*

The testimony of ELIPHALET D. PEARSON, a witness produced by the defendants, and taken the day last aforesaid.

219 The said witness being duly sworn, testified as follows:

Question 1. State your name, age, and residence.

Answer. My name is Eliphalet D. Pearson; age, 41 years; residence, Bedford, Lawrence County, Indiana.

Q. 2. Your attention is called to the copy of the letter found on page 34 of this letter-book, containing what purports to be a letter written July 24, 1869, by W. H. Lewis to M. C. Malott, and you will state, if you know, who were the owners and holders of the bonds there referred to.

A. 2. One of the bonds was owned by G. A. Thurston's heirs, one by Isaac Williams' heirs, and the other by the heirs of a Mr. Williams, whose Christian name is unknown to me. At the date of said letter I held all of said bonds in trust for said owners. At the time of G. A. Thornton's death, in September, 1864, he was the owner of one of said bonds, and held the other two as executor of the estates of the said Isaac Williams and Williams. At the date of said letter I held one of said bonds as executor of said Thornton's estate, and the other two came into my hands among the papers of said Thornton's estate.

Q. 3. State what disposition, if any, was made by you of the bond held by you as the executor of G. A. Thurston's estate, and what you now hold in lieu thereof, if anything.

A. 3. I forwarded the bond to W. H. Lewis, through M. A. Malott, the cashier of the bank in which the bond was on special deposit, in accordance with a letter from said Lewis to said Malott, a copy of which I find on page 23 and 24 of letter-book, as testified to by Mr. E. J. Brooks. I received for it a certificate of stock and a certificate of fractional stock in the Louisville, New Albany and Chicago Railway Company, which I now have here.

And said defendant introduced in evidence said certificates, which are in the following words and figures, to wit:

Said certificate of stock is as follows:

No. 102.] [12 shares.

THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY.

Shares $100 each.]

OFFICE OF THE FARMERS' LOAN & TRUST CO.,
TRANSFER AGENTS IN NEW YORK.

By virtue of warrants to this agency, we hereby certify that C. D. Pearson, trustee for G. A. Thornton's heirs, Bedford, Ind., is
220 entitled to twelve shares in the capital stock of the Louisville, New Albany & Chicago Railway Co., transferable only on the books at the transfer-office, in the city of New York, in person, or by attorney, upon the surrender of this certificate.

In witness whereof we, the Farmers' Loan & Trust Company, by our president and secretary, have hereunto affixed our signatures, at New York, this 29th day of July, 1869.

R. G. ROBERTSON, *Pres't.*

GEO. R. FITCH, *Secretary.*

[25 cts. U. S. rev.-stamp.]

Said certificate of fractional stock is as follows:

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY.

OFFICE OF FARMERS' LOAN & TRUST CO., TRANSFER-AGENTS,
No. 17.] *New York, July 29th,* 1869.

This is to certify that C. D. Pearson, trustee for G. A. Thornton's heirs, is entitled to a fractional part of a share of stock in this company amounting to fifty dollars.

Upon the surrender of this certificate at this office with others of like tenor, amounting in the aggregate to one hundred dollars, a share of stock will be issued therefor.

R. G. ROBERTSON, *Pres't.*

[5 cts. U. S. rev.-stamp.]

And said witness further testified as follows:

Q. 4. What, if anything, have you, as the holder of said certificate of stock, received by way of dividends on the same, and from whom was it received?

A. I have received the sum of thirty-six dollars as a dividend on said stock, which I received through M. A. Malott as my agent. It was received several months ago.

Said defendants then offered in evidence the affidavit of Henry Crawford, being a part of the files in this cause. Which evidence was ob-

jected to by John H. Stotsenbeurg, attorney for said complainant, for the reason that the same is immaterial, irrelevant and impertinent.

221 Said affidavit so offered in evidence is as follows, to wit:

Circuit court of the United States, district of Indiana.

CHARLES E. BILL
vs.
LOUISVILLE, NEW ALBANY & CHICAGO R. R. CO.

STATE OF INDIANA, *Marion County, ss:*

HENRY CRAWFORD, upon his oath, says that he has been acquainted with the affairs of the Louisville, New Albany & Chicago Railroad Company since 1857; that, from 1858 continuously to the year 1866, this affiant was attorney for the trustee, Douw D. Williamson, who was in possession of said line of railroad and operating the same in the name of the company; that, from Oct. 1, 1859, to Dec. 31, 1860, the earnings of said road were only $724,745.84, and in the year 1861 were also running low, and the larger part of the principal of the $200,000 loan was unpaid, and the principal of the Crawfordsville & Wabash Railroad bonds was falling due; and the said Williamson instructed the law-firm of R. Crawford & Son to prepare and file the supplemental bill of Dec., 1861, and this affiant did prepare such bill. Afterwards the earnings of the road began to improve, and sufficed to pay off the said loan of $200,000 and interest, the principal and interest of the Crawfordsville & Wabash Railroad bonds, and to lift some of the past-due coupons on the 8 per cent. and 10 per cent. bonds; and the said Williamson instructed the said firm of R. Crawford & Son not to take any further steps under said bill, and not to issue any notice thereupon, and none was ever given. When the loan of $200,000 was fully paid, in 1864, the said railroad company was five years in arrears of interest on its bonded debt, and the said Williamson, at the request of the bondholders, retained possession of the said road under the conditions and terms set out in the mortgages, and the said Williamson has not had or claimed possession of said road since 1864, under the interlocutory decree of June 23, 1858, but only under the mortgages executed by said company; and he so continued in possession and control of the said railroad until the appointment of James F. Joy as receiver, by the White common pleas court, and during all of said time managed the said property through agents and officers appointed by him, as he had always done.

The foreclosure action in the White common pleas court was in-

222 stituted in pursuance of the request of a majority of the bondholders of the said railroad, to the said Williamson, for him to take steps to foreclose the said mortgages and sell the said railroad and appurtenances. This affiant is personally cognizant of said demand of said bondholders, and that the said action was brought in good faith, and not in pursuance of any fraudulent arrangement whatever; and the only reason why the case of Williamson vs. The New Albany & Salem Railroad Company was not dropped from the docket before the said foreclosure suit in White County was brought, was on account of some unsettled matters in relation to the Gosport branch and the counsel fees. During the time the said Joy had charge of the said road he made disbursements under the authority of the court which appointed him, and his accounts are now pending in the said State courts; and the charge that the said Joy and his confederates are now holding any part of the said earnings, or have disposed of the same for purposes foreign to the trusts

embraced in the mortgages, is utterly untrue and without any foundation in fact. The facts with regard to the purchase of said railroad are falsely stated in the petition of John Savage Shaw, and are correctly shown in the report of the sheriff and clerk, in the printed copy of the record of said foreclosure suit. The said purchase was made by said George F. Talman and others; not in their own right or for their own personal benefit, but as trustees for the benefit of the holders of the ten per cent. and eight per cent. bonds of said company; and immediately after the execution of the conveyance to them, they organized a corporation called the Louisville, New Albany & Chicago Railway Company, in the which all holders of the ten per cent. and eight per cent. mortgage-bonds are entitled to stock in proportion as they own bonds of said old company; and since the said sale, large numbers of bondholders have surrendered their bonds and come in under said purchase, so that very few of the said original bonds are now outstanding; and the said new corporation has no stockholders who were not bondholders of the said New Albany & Salem Railroad Company; nor do the said persons styled in said petition as usurping directors now claim to own said road, but the Louisville, New Albany & Chicago Railway Company, a corporation formed under the laws of the State of Indiana, and a citizen of Indiana, does claim and has since June 21, 1869, claimed,
to be the exclusive owner of all of said line of railroad, and the
223 said persons named as usurping directors are only a small portion of its stockholders.

This affiant further says that the power of attorney executed by Charles E. Bill to this affiant and Chase & Wilstach, was so executed on the 20th of September, 1869, and long before John Savage Shaw had made any motion or taken any steps herein; and the motion to dismiss so made by the said Bill is made with the consent of the holders of nearly the whole issue of the ten per cent. and eight per cent. bonds, and of a large majority of the holders of the stock of the said Louisville, New Albany & Chicago Railway Company, and not to cover up or sustain any fraudulent practice whatever.

HENRY CRAWFORD.

Subscribed and sworn to this 4th day of June, A. D. 1870.

JOHN D. HOWLAND, *Clerk.*

Entered:

"Filed June 4, 1870.

"JOHN D. HOWLAND, *Clerk.*"

WILLIAM H. LEWIS, a witness on behalf of the complainat, being sworn, testified as follows, to wit:

By complainant:

Question 1. What is your age, name, and residence?

Answer. Age, thirty-six year'; William H. Lewis; residence, New Albany, Indiana.

Q. 2. Do you know the parties to this suit?

A. I am acquainted with Gideon Putnam and Stella C. Putnam, his wife, and the complainant, Charles E. Bill, and the railroad company. The other parties I am not acquainted with.

Q. 3. What capacity, if any, did you occupy in relation to the operation of the Louisville, New Albany & Chicago Railroad Company in the year 1858, and how long did you continue in such capacity?

A. I was cashier for the trustee, D. D. Williamson, in October, 1858, and continued in that capacity until the 1st of October, 1868.

Q. 4. Who had charge of the receipts and disbursements of the said railroad from the month of October, 1858, continuously, until October, 1868?

A. I had.

Q. 5. Have you prepared a statement of the receipts and disbursements of the said railroad during said period? If yes, attach the same to your answer hereto.

A. I have prepared such a statement, and the paper here marked A is the statement to which I refer. I make it a part of my answer.

224 Q. 6. Please state who had charge of the receipts and disbursements of the said railroad company while it was in the custody James F. Joy, claiming to act as receiver, and who had such charge from the time said Joy surrendered possession down to December, 1870?

A. I had.

Q. 7. Give a statement of the receipts and expenditures made by the said Joy while he was in such possession.

A. The statement herewith marked B is a full and correct statement of all of the receipts and expenses. I make said statement B a part of my answer.

Q. 8. Give a further statement of the amount of the receipts and disbursements of the said railroad, after the said Joy delivered up possession, continuously, to December, 1870.

A. The statement required by this question will be found here, marked C, which I make a part of my answer, which contains a full and correct statement of said receipts and disbursements.

Q. 9. What is the amount of the outstanding and unpaid 10 per cent. mortgage-bonds issued by the said railroad company at this time?

A. The principal of the bonds is five hundred thousand dollars; there is probably more than that of past-due interest upon them. I have no means of knowing the precise amount of the unpaid interest.

Q. 10. What is the amount of the outstanding and unpaid 8 per cent. mortgage-bonds issued by the said railroad company?

A. The amount of such bonds originally issued was $2,325,000, but $14,000 of them have been paid and cancelled, leaving $2,311,000 of the principal of said bonds outstanding, together with probably over two million dollars of unpaid interest. I have no means now at hand of ascertaining the exact amount of interest.

Q. 11. What is the amount of the principal of the outstanding unsurrendered 7 per cent. mortgage-bonds, of the date the third of November, 1853, which were never converted into the new stock provided for by the decree of the United States court?

A. The amount of the principal of that series of bonds now outstanding is $116,000.

Q. 12. What is the principal of the outstanding 7 per cent. bonds of the said railroad company issued under the mortgage of February
225 1, 1855, and which have never been surrendered for conversion into the new stock provided for by the decree of the United States court?

A. There are $80,500 worth of bonds of that issue outstanding.

Q. 13. What is the amount of the principal of the present outstanding 10 per cent. income-bonds issued by the said railroad company under a mortgage dated December 21, 1856, and which have never been converted into the new stock aforesaid?

A. The amount of the principal of such bonds is $80,153.87.

Q. 14. What was the amount of the original issued capital stock of

the said railroad company at the date of the said decree in the United States circuit court?

A. The amount paid in full shares was $2,476,250. The amount issued in fractional shares was $48,973.96, making together $2,525,223.96.

Q. 15. State now the amount of the new stock issued under the said decree, and give the details of the amount of bonds surrendered and converted into the said new stock?

A. 15. The amount issued in full shares was $2,049,600. The amount issued in fractional shares was $8,432.91, making together $2,058,032.91.

There have been surrendered of the 7 per cent. bonds	$1,698,700 00
And of the 10 per cent. income-bonds	322,302 87
And of the 6 per cent. construction-bonds	6,380 00
Total amount surrendered	$2,027,382 87

Q. 16. State now the amount of old stock which has never been surrendered for conversion into new stock under said decree?

A. 16. One million one hundred and twenty-nine thousand four hundred and twelve dollars and seven cents.

Q. 17. State, if you can, what property was delivered into the hands of Douw D. Williamson under the decree of June 23, 1858.

A. 17. The property delivered into the hands of Douw D. Williamson under that decree will appear in the deed of surrender from the said railroad company to said Williamson, a copy of which is herewith filed, marked D, and made a part of my answer, and in the deed of Jesse J. Brown to said Williamson, a copy of which is marked I, is also herewith filed and made a part of my answer.

226 On cross-examination of said witness by S. A. Huff, attorney for the intervening petitioners, he testified as follows:

Question 1. In what employment had you been engaged, and where, prior to your becoming cashier for the trustee, Douw D. Williamson, in 1858?

Answer 1. I was employed as a ticket-agent for the Louisville, New Albany & Chicago Railroad Company, at Lafayette, Indiana, for five or six weeks before that time, and before such employment I was bookkeeper in the city of New York.

Q. 2. How long have you been acquainted with George F. Talman and George L. Schuyler, of the city of New York, and where did you form their acquaintance?

A. 2. I became acquainted with Mr. Talman about ten years ago, and Mr. Schuyler about the same time.

Q. 3. When did you first become acquainted with the late Douw D. Williamson?

A. 3. About thirty years ago.

Q. 4. What relation did Douw D. Williamson sustain to the Farmers' Loan and Trust Company of New York, and when did such relation commence and terminate?

A. 4. He was president of that company for about twenty years, but I cannot say when that relation commenced or terminated.

Q. 5. Through whose instrumentality were you employed to act as the agent of James F. Joy, in the receipts and disbursements of the Louisville, New Albany & Chicago Railroad Company, while said Joy was acting as the receiver, from October, 1863, to June, 1869?

A. 5. I was appointed to that position by Mr. Joy. The appointment was by power of attorney.

Q. 6. Is that instrument to be found among the files in company's office; if not, where is it?

A. 6. It is deposited with the First National Bank of New Albany.

Q. 7. Was that instrument delivered to you by the hand of Mr. Joy, in person, or of some one else, or in what manner and by whose hands did you receive it?

A. 7. I cannot state positively, but I think Mr. Joy sent it to me by mail.

227 Q. 8. In the statement B, made a part of your evidence-in-chief, you have carried the account to December 31, 1870, and indorsed it "Receipts and disbursements of James F. Joy, receiver, from October 1, 1868, to December 31, 1870." Why do you present the statement in that form, when from June, 1869, to December, 1870, your accounts were carried on in the name of the Louisville, New Albany & Chicago Railway Company?

A. The railway company came into the possession of the road, and did not assume the assets or liabilities of Joy, the receiver.

Q. 9. In that statement, B, you claim credit for disbursements for ordinary expenses from May 1, 1869, to November 30, 1869, and state a like claim for disbursements from November 30, 1869, to December 31, 1870. Will you give the character of the disbursements for which such credits are claimed?

A. The disbursements made by Mr. Joy, and classified as ordinary expenses in the statements referred to after June 10, 1869, were made for expenses incurred by him as receiver, previous to that date.

Q. 10. Are we to understand from the statements so made in Exhibit B, that the disbursements there claimed were on account of liabilities incurred by the receiver in running and operating the road, which remained unpaid at the time the railway company took possession of the property?

A. Yes, sir.

Q. 11. In the statement B of the account from November 30, 1869, to December 31, 1870, a credit of $2,700 appears for disbursement to Michigan City Harbor Company. Explain that credit, and state the date at which that disbursement was made; whether any voucher is to be found therefor, or ever appeared in the company's office.

A. The payment was made as a balance due on a subscription of the railroad to the harbor company. I cannot state the date of such payment, but is only recorded on the cash-book of the receiver, and a proper voucher filed for the same in the office of said railroad company, in the city of New Albany, Ind.

Q. 12. In preparing the statements, A, B, and C, made exhibits with your evidence-in-chief, were you careful to go through the details of the accounts there exhibited, to ascertain that they were
228 supported by vouchers, and that the expenditures stated to have been made were all legitimate charges upon the funds of the railroad company?

A. At the time of preparing said statements I did not do it, having previously done it, the original entries in the books from which said statements were made having been made by me, and the disbursements being all supported by proper vouchers; and, so far as I know, they were legitimate charges.

Q. 13. In your statement B you open the account with Mr. Joy by charging him with cash from D. D. Williamson, $48,112.50, and following with the several amounts received from freight, passenger, mail, express, and telegraph earnings, from Oct. 1, 1868, to Dec. 31, 1868. Are

these items of earnings derived from the operations of the road during that period?

A. When Mr. Joy took charge of the road he assumed the liabilities and assets of the trustee; and, included in the amounts so charged, are certain balances earned by the trustee but collected by Mr. Joy after the property came into his possession as receiver.

Q. 15. What amount was actually earned in each branch of the service, including freight, passenger, mail, express, and telegraph business, from Oct. 1, 1868, to Dec. 31, 1868?

A. I cannot answer that question from recollection. The books in the office of the railroad company will show what the actual earnings were during said period.

Q. 15. As a matter of fact were not the several sums charged to Joy as received from mail, express, and telegraph earnings from Oct. 1, 1868, to Dec. 31, 1868, derived from the service in those departments during that period?

A. The amounts charged were received by him from those sources, but some part of them were probably earned during the administration of the trustee.

Q. 16. In your answer to the 9th interrogatory of the examination-in-chief you say the principal of the bonds bearing 10 per cent. interest outstanding is five hundred thousand dollars. Do you mean by that answer to include that portion of the ten per cent. bonds that were surrendered to and converted into the stock of the Louisville, New Albany & Chicago Railway Company?

(Objected to by H. Crawford, attorney, and the objection is sustained by the master; and exception to the ruling by S. A. Huff, attorney.)

Q. 17. What amount, if any, of the 10 per cent. bonds were
229 surrendered and converted into the stock of the Louisville, New Albany & Chicago Railway Company?

A. I do not understand that any of said bonds were surrendered to the railway company, the books of the company showing no such transaction.

Q. 18. Your attention is called to a letter-book now shown you, on which a slip containing the words and figures, "June 12th, 1869, to June 10th, 1870," is pasted. Please state what letter-book it is, and whether it contains your correspondence in relation to the transactions of the Louisville, New Albany & Chicago Railway Company during the period indicated by that slip.

(Objected to by H. Crawford, attorney, and objection overruled and excepted to by said attorney.)

A. It is a letter-book in use at that time, and contains a part of my correspondence in relation to the business of that railway company.

Q. 19. Turn to the letter on pages 23 and 24, and of date July 13, 1869, and state in whose handwriting it is, and upon what authority, or upon information from whom, was that letter written.

A. The letter referred to is in my handwriting. My recollection of the matter is, that Mr. George L. Schuyler informed me that the property had been purchased at sheriff's sale in White County, Indiana, by certain parties who were also holders of a large portion of the 8 per cent. and 10 per cent. bonds; that they had organized a company for the purpose of operating the road, and that the number of shares held by the several corporators was based upon the number of bonds of the railroad company held by them; and that while they were not compelled to admit the holders of other 8 per cent. and 10 per cent. bonds to the same privileges, they were willing to do it; and I was instructed by Mr.

Schuyler to state that fact to any party or parties whom I could learn were holders of such bonds, and in pursuance of such instructions that letter was written.

Q. 20. Were your instructions from Schuyler above referred to in writing, or in mere verbal conversation?

A. I think they were verbal.

Q. 21. Was the letter appearing on the letter-book referred to on pages 24 and 25, put into the post-office to the address of M. A. Malott, Bedford, Indiana, without alteration of its contents?

230 (Objected to by H. Crawford, attorney, and objections overruled, and exceptions taken by said attorney.)

A. I have no recollection of the matter, but I presume it was.

Q. 22. Your attention is now called to the letters appearing on pages 34, 65, and 75, in the letter-book referred to. In whose handwriting do they appear to have been writen?

A. They are each in my handwriting.

Q. 23. State what was done with the 10 per cent. bonds referred to in the letter on page 34 of the letter-book as Nos. 264, 266, and 270, the receipt of which appears to have been acknowledged by you in that letter.

A. They were sent by me to the office of the Farmers' Loan and Trust Company, in the city of New York, and they were afterwards returned to me and forwarded by me, through Messrs. Chase & Wilstach, of Lafayette, to D. D. Dale, the clerk of the common pleas court of White County, Indiana.

Q. 24. Did you make letter-press copies of the correspondence between you and the Farmers' Loan & Trust Company of New York, respecting the said three bonds?

A. Yes, sir; I did.

Q. 25. When the ten per cent. bonds, numbered 264, 266, and 270, were returned to you, did you receive any other paper or papers to be forwarded to Malott in lieu of the bonds? If yes, describe such paper or papers.

A. I did, as nearly as I can recollect. It was a certificate of stock in the Louisville, New Albany & Chicago Railway Company.

Q. 26. Now examine the letter of August 2d, 1869, on page 65, of the letter-book, as also the two certificates signed R. G. Robston, president, now produced, and state whether the two certificates purporting to be stock-certificates to E. D. Pearson, trustee of G. A. Thornton's heirs, are the papers referred to in that letter, and whether the other certificates referred to in the letter were similar in form to the ones so shown you.

A. They are the papers referred to in said letters.

Q. 27. Where did the conversation with George L. Schuyler in relation to the purchase of the property and the formation of the new company occur?

A. In the office of said railway company, in the city of New Albany, Indiana, as well as I can recollect; it was before the 13th day of July, 1869, but I do not recollect the exact date.

231 Q. 29. In that conversation what proportion of the ten per cent. and eight per cent. bonds did Mr. Schuyler say were represented by the parties who had been instrumental in the formation of the new company?

A. I do not recollect that there was anything said about the proportion.

Q. 30. With reference to any books or files kept by you while acting as secretary of the railway company, are you able to state what propor-

tion of the bonds were represented by the persons who purchased the property at the sheriff's sale in White County?

A. I am not able to state from any books or files of said railway company.

Q. 31. In your answer to the ninth interrogatory of your examination-in-chief, you state that the principal of the outstanding ten per cent. bonds is five hundred thousand dollars; and to the tenth interrogatory, same examination, that the amount of outstanding eight per cent. bonds is $2,311,000; do you include in these statements the bonds that were treated as were those held by Malott, about which your correspondence with him occurred?

A. Yes, sir.

GIDEON PUTNAM, produced on behalf of intervening defendants, being duly sworn, testified as follows:

Question 1. By defendants. State what relation you bear to the case now pending in the circuit court of the United States for the district of Indiana, wherein Charles E. Bill is complainant and the Louisville, New Albany & Chicago Railroad Company are defendants and others, and what amount, if any, and of what series of the bonds of the New Albany & Salem Railroad Company you hold; and from whom you acquired the the same, producing with your answer the bond or bonds you may so hold, to be filed with the master herein.

A. I am one of the intervening defendants in said case. I am the owner and holder of one of the bonds of said railroad company for one thousand dollars and the unpaid coupons thereon, of the first of February, 1855, drawing 7 per cent. interest, which bond I here produce and file with the master as a part of my answer, being No. 156. I acquired said bond from W'm Duncan, as will appear by the as'ig'ment thereon endorsed, said assignment having been made in the year 1869.

232 Q. 2. How many, and of what series and amounts, of the bonds of the New Albany and Salem Railroad Company, are held by the children of the late Robert Shaw, deceased? In answer to this, state the names of the children of the said Robert Shaw and how they became entitled to the bonds held by them.

A. Said children own, as I am informed and believe, of the series known as the 10 per cent. income-bonds of the New Albany and Salem Railroad Company, of the date of December 1, 1855, four bonds of $500 each, numbered as follows: 70, 76, 194, 559, with the coupons attached, which are here now exhibited and filed. Of the series of December 1, 1853, of 7 per cent. bonds of said company, eight of one thousand dollars each, with the coupons attached, said bonds numbered 24, 40, 234, 391, 392, 393, 397, 756, which are herewith exhibited and filed. Also, of the series of February, 1855, of 7 per cent. bonds of said company, nine bonds of one thousand dollars each, which bonds, numbered 209, 210, 235, 405, 646, 647, 649, 650, with the coupons attached, are herewith exhibited and filed. Said bonds originally belonged to Henry Shaw, now deceased, who was the father of Robert T. Shaw, who is also now deceased. According to my information and belief, he gave all of said bonds to the children of said Robert T. Shaw, dec'd, his grandchildren. Said grandchildren's names, who are the owners of said bonds, are as follows: Frank E. Shaw, Gideon Shaw, and Helen Shaw. My wife is a daughter of said Henry Shaw, deceased, and my information in regard to the ownership of said bonds has been received from the family and children of the said Henry Shaw, deceased.

Question 1. By complainant's counsel, J. H. Stotsenburg, esq. Do you know, of your own knowledge, who are the owners of said bonds?

Answer. I do not; I only know it from information and belief, as I have stated.

WILLIAM N. MAHON, who was appointed by the master to assist him as clerk in the examination of the books and accounts of said railroad company, was introduced as a witness on behalf of said intervening parties, who, being duly sworn, testified as follows:

Question 1. State, if you have the means of ascertaining from the books and files of the offices of the New Albany and Salem Railroad Company, and of the Louisville, New Albany and Chicago Rail-
233 road Company, what iron rails and machinery belonged to the New Albany and Salem Railroad Company on the 8th day of February, 1851, and the value thereof.

Answer. The books show balances to the respective accounts on that date, February 8, 1851, as follows:

Iron rails, (flat)	$80,426 85
Locomotives	17,343 51
Machinery	14,355 58
Passenger-cars	5,713 51
Freight-cars	12,582 61
Total	$130,422 06

Q. 2. State, if you have the means of ascertaining from the books and files of said offices, what iron rails and machinery were purchased with the bonds secured by the trust-deed of February, 1851, or with money obtained from such bonds, and the value thereof.

A. The sale of the bonds above mentioned extends over a period between the dates of March 25, 1851, and April 18, 1853, during part of which time the next issue of bonds were selling also, so that a correct answer to the above cannot be given. The books of the company show the following amounts charged directly against the proceeds of the sales of the $500,000 10 per cent. bonds.

Iron rails, (T)	$176,910 68
Chairs and spikes	6,134 00
Locomotives	18,246 33
Total	$201,291 01

Q. 3. State, if you have the means of ascertaining from said books and files, what iron rails and machinery belonged to said New Albany & Salem Railroad Company, on the 14th day of February, 1852, and the value thereof.

A. The books of the company show the following balances to their respective accounts on the date mentioned, February 14, 1852:

Iron rails, flat, construction to Salem	$62,553 77
Balance rail account	17,873 08
Iron rails, (T)	122,115 17

Locomotives		50,192 98
Gravel-cars		4,200 00
234 Passenger-cars		7,887 61
Freight-cars		43,000 00
Machinery		16,533 18
Chairs and spikes		7,257 52
Total		$331,613 47

NOTE.—The discrepancy between the iron T-rail account and that as shown in answer No. 2, arises from the fact that the account of purchases was brought down to May 26, 1852, and this last statement to February 14, 1852.

Q. 4. State, if you have the means of ascertaining from said books and files, what iron rails and machinery were purchased with the bonds secured by the trust-deed of February 14, 1852, or with money obtained for such bonds, and the value of the iron rails and machinery so purchased.

A. The sale of the first issue of bonds secured by the trust-deed of February 8, 1851, was continued until about the 18th of April, 1853, during part of which time the next issue of bonds, viz, those secured by the trust-deed of February 14, 1852, were selling, and the proceeds of both issues, together with moneys derived from the sales of the capital stock and from other assets of the company, formed a common fund from which purchases of rails, machinery, &c., were made, so that it was impossible to ascertain from what particular source the moneys expended for rails and machinery, together with a statement of the amounts derived from other sources than proceeds of sales of bonds is submitted.

During the time covered by purchases below mentioned, there was received from sources other than proceeds of sales of bonds about $215,000.

Purchases made:

Iron rails, (T)	$637,521 42
Locomotives	60,380 59
Passenger-cars	6,800 00
Freight-cars	26,317 34
Gravel-cars	5,315 00
Spikes and chairs	40,514 86
Total	$776,849 21

Q. 5. State, if you have the means of ascertaining from said books and files, what iron rails and machinery belonged to the said
235 company on the third day of November, 1853, and the value thereof.

A. The following balances are shown to the respective accounts on the third day of November, 1853:

Flat iron rails	$80,426 85
Iron rails, (T)	766,059 11
Locomotives	159,944 27
Machinery	19,843 83
Passenger-cars	18,455 06
Freight-cars	103,898 06

Gravel-cars	10,140 00
Chairs and spikes	79,513 94
Total	$1,238,281 12

Q. 6. State, if you have the means of ascertaining from the said books and files, what iron rails and machinery were purchased with the bonds secured by the trust-deed of said company, of November 3, 1853 or with money obtained therefor, and the value of the iron and machinery so purchased.

A. The proceeds of the sale of the above-mentioned bonds, together with proceeds of the previous issues of bonds and other assets of the company, including money borrowed on the company's bills payable, form a common fund, from which purchases were made, so that it is impossible to answer the above.

Q. 7. State, if you have the means of ascertaining from the books and files of said company, what iron rails and machinery belonged to the said company on the first day of February, 1855, and the value thereof.

A. The books of the company show the following balances to the respective accounts on the date mentioned, 1st day of February, 1855:

Iron rails, flat	$80,426 85
Iron rails, (T)	1,317,531 70
Locomotives	251,799 77
Machinery	46,309 41
Passenger-cars	32,355 06
Freight-cars	259,583 77
Gravel-cars	10,140 00
Chairs and spikes	106,929 51
Total	$2,105,076 07

236 Q. 8. State, if you have the means of ascertaining from said books and files, what iron rails and machinery were purchased with the bonds secured by the trust-deed of the company of February 1, 1855, or with the moneys obtained for said bonds, or with both such bonds and moneys, and the value of such iron rails and machinery.

A. It is impossible to give any answer. For reasons, see answer to No. 6.

Q. 9. State, if you have the means of ascertaining from said books and files, what locomotives, passenger-cars, baggage-cars, and hand-cars, of whatever kind, and what engines, lathes, machinery, tools, and materials of whatever kind in said company's machine-shops, or whatever other place, and what cross-ties not laid in her road, and all other personal property that belonged to said company on the 21st day of December, 1856, and the value thereof.

A. As no files of inventories of stock were kept, I am unable to answer the above.

Q. 11. State, from vouchers on file in the office of the company, the amount of disbursments made on account of the business and operations of her road from October 1st, 1858, to October 1st, 1868.

A. The following is a statement of total disbursements made from October 1st, 1858, to October 1st, 1868:

Classification.	Amount.
Running expenses	$5,704,844 24
Interest on trust-loan	61,514 69
Interest on C. & W. bonds	29,494 04
Interest on 8 per cent. bonds	376,650 00
Interest on 10 per cent. bonds	101,300 00
Expense of trust	56,959 26
Old claims—for old time and wood checks, judgments, open accounts, demands, due-bill, meal-tickets, checks issued, etc	122,260 90
Principal of trust-loan	200,000 00
Construction account	42,406 91
Right of way and real estate	2,444 60
Construction of telegraph	1,894 61
Passenger, freight, and hand cars	279,110 38
Engines, machinery, and tools	60,438 43
Discount and exchange	3,832 88
Switch and car-keys	1,015 00
237 Crawfordsville & Wabash bonds	175,000 00
Expenses north division	64,112 32
Bills payable	40,825 23
New rails	146,685 32
Crawfordsville culvert	7,019 69
Bridges, buildings, and fences	178,853 33
Michigan City Harbor Company	29,700 00
Michigan Central Railroad Company	29,318 65
Stock, Indianapolis & Vincennes R. R. Co	5,000 00
Eight per cent. bonds	14,000 00
Kent, Crawford & Kent	10,000 00
George F. Talman	3,237 34
Ties	29,070 96
Bloomington depot	750 00
Profit and loss—for bills receivable and open accounts charged out, and also error in earnings corrected in case of J. M. & I. R. R. Co	6,335 28
Total	$7,784,074 06

Q. 12. State also the entries in the books of the company, and the returns of the various agents of the company, the earnings of the road for the period between October 1st, 1858, and October 1st, 1868.

A. The following is a statement of the earnings, and also the receipts of the road for the period named, viz, from October 1st, 1858, to October 1st, 1868:

Freight	$3,350,269 04
Passenger	3,535,171 65
Express	146,934 10
Mail	265,977 94
Earnings, northern division	248,660 44
Telegraph	196 11
Military	7,797 32
Miscellaneous	610 00
Total earnings	$7,555,616 60

RECEIPTS.

Old claims		$70,281 99
Bills payable		6,823 84
238 Switch and car keys		1,095 00
Montgomery County Bonds		100,000 00
Passenger and hand cars sold		1,245 00
Machinery sold		2,725 00
Telegraph subscription		986 35
Dis'c't C. & W. bonds		1,475 00
Real estate		735 35
Michigan Central R. R. Co		78,673 35
Discount and exchange		3,537 54
Bills payable		34,001 39
Construction for Mooresville branch sold		10,000 00
Discount on 8 per cent. bonds		8,657 50
Uuse of road		1,500 00
For amount charged in running expenses, as materials purchased and found by inventory to be on hand, which requires this am't to be taken among receipts		18,714 97
Total earnings and receipts		$7,896,068 88

TEST.

Total earnings and receipts		$7,896,068 88
Add for estimated earnings taken up in first year's account		7,698 12
		7,903,767 00
Total disbursements		7,784,074 06
Balance		$119,692 94

Balance assets on hand Oct. 1, 1868:

Cash on hand	$47,544 55	
Due from P. O. Department	5,781 24	
Due from American Express Co	150 00	
Due from M. U. Express Co	2,115 01	
Farmers' Loan & Trust Co	567 95	
Materials purchased	18,941 56	
Operative department	44,592 63	
		$119,692 94

In addition to the above answers to Nos. 11 and 12, I also add the same in a different and more detailed form, marked A.

239 Q. 13. If, from your examination of the books and vouchers in the company's office, you find any charge for disbursements not supported by the proper vouchers, or not properly chargeable as disbursements, state them particularly.

A. During the month of October, 1858, the vouchers for disbursements do not appear to have been regularly kept, and vouchers are missing for a number of items, such as amounts paid various officers of the company, demand due-bills and meal-tickets redeemed and cancelled, &c., amounting in all to $15,489.34, for which I can find vouchers. After

that date, October 1, 1858, I find vouchers for all disbursements except the following:

1859, May 14.	Moore & Richardson for repairs on locomotives	$1,100 00
1860, Feb. 11.	I. Neil Stimson, foreign agencies	10 00
" Apr. 26.	C. C. Haskins	24 45
" Apr. 30.	Old claims settled	25 00
" July 30.	Oil, waste, and tallow, amount of Low & Bridges	138 75
" Dec. 7.	Henry Yates, repairs of engines	100 00
" Dec. 27.	Tax-receipts of Owen, La Porte, Stark, Pulaski, Washington, Lawrence, Monroe, Putnam, Montgomery, Porter, Lake, and Orange Counties, and legal fees on same, with State taxes	5,314 77
1851, Feb. 19.	Tax-receipts Clark County	66 59
" May 27.	Tax-receipts White County	290 63
" July 31.	A. P. Mann	286 81

Of the above for those coupled by the brace vouchers were on file and withdrawn for use of legal advisers as per memoranda to that effect. The disbursement to Moore & Richardson I am satisfied is correct as per ledger account.

Q. 14. State what property belongs to the Louisville, New Albany and Chicago Railroad Company, including her line of railroad and the branches, if any, thereof.

A. In answer to the above you are referred to accompanying copy of invoice, which is made a part of this report.

Q. 15. What amount of earthwork and masonry was done on what is known as the Gosport branch before work on that branch was suspended?

A. The account of the "Mooresville branch" shows an expenditure of $92,172.36, in all, to have been made.

240 Q. 16. What portion of the right of way of the "Gosport branch" had been secured by the company before the work on that branch was suspended?

Q. 17. Looking at the invoice of property placed in the hands of Douw D. Williamson, under the instrument of October 1, 1858, pursuant to the decree of June 23, 1858, state what disposition was made of the property, real and personal, thus placed in the hands of said Williamson.

Q. 18. In answer to the last preceding question, please furnish schedule of the property, real and personal, disposed of by the said Williamson, together with whatever may have been realized therefrom.

A. (to Q. 17 & 18.) The property was turned over to Douw D. Williamson by a general deed of surrender, which specified nothing but real estate, so that only sales of real estate can be given in answer. The following is a schedule of sales:

Oct. 12, 1858.	Balzelle lands	$146 91
Dec. 10, 1858.	Real estate sold to L. Fally	200 00
Mar. 23, 1859.	Distillery at Lafayette standing still to Dr. of Chase & Wilstach on old books.	6,540 00
Sept. 8, 1863.	A credit of cash as received from McDonald & Porter on sale of lots at Indianapolis	979 65

June 7, 1864.	Same	499 25
July 11, 1860.	D'ft in favor of Otto & Davis, on McDonald & Porter, as above	1,000 00

Q. 19. State what expenditures were made of the earnings or other money belonging to the company, in the purchase of the right of way for and in the construction of the road from the original track of the company's road in New Albany, to a point of junction with the Jeffersonville, Madison & Indianapolis Railroad, in the city of New Albany, together with all the outlays incident to that enterprise, including all real estate purchased with respect to the same.

A.	Amount paid for grading	$3,130 26
	Amount paid for engineering	656 63
	Amount paid for ties	1,314 05
	Amount paid for iron	8,147 32
	Amount paid for real estate	13,840 00
241	Amount paid for incidental expenses	2,326 02
	Total	$29,414 28

To S. K. WOLFE, *Special Master, &c.:*

In making up your report of the amount due on the bonds, will you please deduct and allow as a credit the sums of—

$180.000 paid out during the existence of the railway company to the bond-creditors, and the further sum of $29,700 paid on request of the bondholders on account of Michigan City Harbor Company.

Both these items are included in the supplemental bill and acknowleged as credits, and sworn to by Mr. Lewis.

Yours, &c.,

H. CRAWFORD,
Solicitor for Trustees and Bondholders.

STATE OF INDIANA, *Floyd County, ss:*

I certify that the foregoing, with the exhibits therein referred to, is the whole of the evidence taken in said cause, and that the same was correctly reduced to writing by me, except the testimony of William N. Mahon, which was written by himself.

(Attest:)

S. K. WOLFE,
Special Master, &c.

D.—*Certified copy of deed from the New Albany and Salem Railroad Company to D. D. Williamson.*

This indenture, made this sixth day of October, 1858, by the New Albany and Salem Railroad Company of the first part, and Douw D. Williamson of the city and State of New York of the second part, witnesses, that, whereas said railroad company, by her deed dated February 8, 1851, granted to said Williamson, as trustee, all that part of her railroad which lies between New Albany and Gosport, in the State of Indiana, with the appurtenances, to secure the payment of five hundred bonds of one thousand dollars each, made by said railroad company, bearing an interest of ten per cent. per annum, payable semi-annually in the city of New York, which deed is recorded in book H, page 146, of the records of deeds in the office of the recorder of Floyd County, in said State of Indiana, and is referred to for greater particularity
242 and certainty, and said railroad company, by her deed dated Feb-

ruary 14, 1852, granted to said Williamson, as trustee, all that part of her railroad which lies between said New Albany and Michigan City, and between said Gosport and Indianapolis, Ind., and to be made, with the appurtenances, to secure the payment of two thousand bonds of one thousand dollars each, and six hundred and fifty bonds of five hundred dollars each, bearing an interest of eight per cent. per annum, payable semi-annually in the city of New York, which deed is recorded in book Y, page 203, of the records of deeds in the office of said recorder and is referred to for greater particularity and certainty, and said railroad company, by deed dated November 3, 1853, granted to said Williamson, as trustee, all the property last aforesaid, with the appurtenances, to secure the payment of one thousand bonds of one thousand dollars each, bearing an interest of seven per cent. per annum, payable semi-annually in the city of New York, which deed is recorded in mortgage-book No. 1, page 163 of the records of mortgages in the office of said recorder, and is referred to for greater particularity and certainty; and said railroad company by her deed dated February 1, 1855, granted to said Williamson, as trustee, all the property last aforesaid, with the appurtenances, to secure the payment of nine hundred bonds of one thousand dollars, one hundred and sixty bonds of five hundred dollars, and one hundred bonds of two hundred dollars each, bearing an interest of seven per cent. per annum, payable semi-annually at the city of New York, which deed is recorded in mortgage-book No. 1, page 409 of the records of mortgage in the office of said recorder, and is referred to for greater particularity and certainty; and said railroad company, by deed dated December 21, 1855, granted to said Williamson, as trustee, all her locomotives, passenger-cars, freight-cars, baggage-cars, hand-cars, of whatever kind, all her engines, lathes, machinery, tools, and material of whatever kind, to secure the payment of eight hundred bonds of five hundred dollars, and one thousand bonds of one hundred dollars each, bearing an interest of ten per cent. per annum, payable semi-annually in the city of New York, which deed is recorded in mortgage-book No. 2, page 25, of the records of mortgages in the office of said recorder, and is referred to for greater particularity and certainty; and whereas some of the interest on said bonds being due and unpaid, said
243 Williamson, as such trustee, on the day of 1857, filed his bill of complaint in chancery in the circuit court of the United States for the district of Indiana against said railroad company and other persons, praying as is set forth in the bill which is still on file in the court, referred to for further particularity and certainty, and at the May term of said court, in the year 1858, to wit, on the 23d day of June, 1858, a decree was rendered by said court in said suit in the words and figures following, to wit:

"DOUW D. WILLIAMSON, TRUSTEE,
against
"THE NEW ALBANY AND SALEM RAILROAD CO. et al.

"Be it remembered that, on this the 23rd day of June, 1858, come the parties, and this cause coming on to be heard on the petition of said complainant, and it appearing that it is for the interest of all parties concerned in the trust set forth in the bill of complaint in this cause, and by the consent of the plaintiff and defendants, and on the joint motion of the counsel of said complainants and the counsel of said defendants, it is hereby ordered that the net proceeds arising from the business and

traffic of said road, after paying the necessary expenses of operating and carrying on the business of the same, and for supplies, repairs of its road, cars, bridges, buildings, fixtures, and machinery, and keeping the same and its rolling-stock good and in repair, be applied to the payment of the confidential indebtedness of said company mentioned in Schedule A, herein annexed, in these words and figures, to wit:

"'Schedule of that part of the floating-debt of said company which is secured by the directors and officers of said company and by others, at their request, viz:

"'Amount due at sundry banks in Louisville, Ky	$50,132 20
"'Amount due at sundry banks in New Albany	7,436 00
"'Amount due at sundry banks in Michigan City	1,800 00
"'Amount due in Lafayette	1,000 00
"'Amount due in New York	17,807 61
"'	$78,175 82

"'The above debts from time to time are renewable or changed in individual amounts and other paper given; and while the aggregate debt remains the same, the institutions or individuals to whom
244 the same may be payable and the endorsers of the same, are changed as the business and receipts of the road may require.

"'STATE OF INDIANA, *Floyd County, ss:*

"'George Lyman, secretary of the New Albany & Salem Railroad Company, being sworn, says that the floating-debt of said company which is secured by the directors and officers of said company, and by others, at their request, amounted on the 21st day of June, 1858, to the sum of seventy-eight thousand one hundred and seventy-five dollars and eighty-two cents.

"'GEORGE LYMAN.

"'Subscribed and sworn to before me this 21st day of June, 1858.

"'W. W. TUTTLE,

"'*Notary Public.*'

"Not exceeding the sum of seventy-five thousand dollars, and payment of operatives, men, and laborers, and necessary expenses in repairs of damages by the recent fire and flood to said railroad, on said railroad, not exceeding the further sum of one hundred and twenty-five thousand dollars, until the same is paid. And in order to enable the said trustee the more effectually to carry out his trust, and the sooner and more effectually to avail himself of the benefits of the trust-estate, and the more effectually to preserve the same, the said trustee is hereby authorized and empowered in his discretion to borrow a sum or sums not exceeding two hundred thousand dollars, on such terms as to time and rate of interest as he shall deem best, for the sole purpose of paying off said confidential indebtedness, and other debts referred to; and the said trustee is hereby authorized and required to repay such sums and interest as he may in his discretion borrow, under the power hereby given, out of the first net proceeds of said trust-estate from whatever source the same may arise; and said trustee is hereby expressly authorized to secure the repayment of such sum or sums as he may borrow as aforesaid, in such form as he may deem best, upon all the net pro-

ceeds of the said road, and upon said trust-estate, and prior to any and all other liens upon the same. And it is hereby further ordered by the consent of said complainants and defendants, and that in order to enable said trustee to effect such loan and to effectually secure the same, that the possession of said road and all its fixtures, engines, cars, rolling-stock, machinery, tools, and property, both real and personal, and all appurtenances of the same, be delivered to said trustee to be held by him until said sums above referred to be fully repaid; and that whenever such sums shall be repaid in full, such trustee shall surrender, on their request in writing, to the directors of said company, the said road, fixtures, engines, cars, and all of said properties, both real and personal, and that in the mean time the said road shall be run and operated through such directors, officers, agents, employees, and laborers as the said trustee shall deem best, the said trustee being liable personally only for a faithful discharge of his trust in carrying out the same according to his best judgment. And in case of the death of the said trustee, the same powers and duties hereby conferred upon said Douw D. Williamson, as trustee, shall be had and exercised by his lawful successor in trust. Provided, that such a portion of said net proceeds may be appropriated by said trustee to the purchase of such necessary engines and cars, and for the repairs of damages by the recent fire and flood to said railroad, as he may deem best for the interest of said trust-estate; and provided that such real estate and other property as may not be necessary for the use of said road may be applied in settlement of the indebtedness of said company; and provided that the said railroad company shall not be required to surrender up the possession of said railroad and its appurtenances as above mentioned until the said confidential indebtedness above mentioned is paid or arranged to an amount not exceeding seventy-five thousand dollars.

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"I, Horace Barrett, clerk of said United States circuit court for the district of Indiana, do hereby certify the above and foregoing to be a true and correct copy from the records now in my office.

"In testimony whereof I have hereto set my hand and affixed the seal of said court, on this 24th day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

[SEAL.] "H. BASSETT, *Clerk.*"

The debts last aforesaid having been paid, or arranged by said Williamson, as trustee under said decree, which is above recited in words at length; therefore, in consideration of the matters aforesaid, and of one dollar paid by said Williamson, said railroad company does hereby transfer and deliver to said Williamson, as trustee under said decree, above recited in words at length, the possession of her said railroad between New Albany and Michigan City, and between Gosport and Indianapolis, including the track and rights of way, and all fixtures of the railroad; all her depots, station-houses, and machine-shops; all her locomotives, passenger, freight, baggage, and hand cars, and rolling-stock of every kind; all her engines, machinery, and tools of every kind; all her iron rails, cross-ties, wood, and materials of whatever kind, provided for said railroad; and all her goods and chattels of every kind; and the said railroad company do hereby also grant and convey to said Douw D. Williamson all her lands, tenements, and hereditaments described in the schedule hereto annexed marked A, and sealed with the seal of said railroad company, to have and to hold the possession of all and singular of said property by said Williamson as a trustee, for the purposes and trusts described in the decree above recited in words at

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length, in all respects as fully and completely as said railroad company ought to make, and as said Williamson ought to have the same by virtue of and pursuant to the decree above recited in words at length, and to have and to hold all the said lands described in the Schedule A above referred, to him, his heirs and assignees aforesaid forever, with full powers to sell and convey the same, in fee, for the purposes of the trust in the above decree contained; and when the purposes of the trust for which the possession of said property is so given to said Williamson shall have been, or ought to have been, fully accomplished, he shall redeliver all or so much of said property as shall then remain to said railroad company or her assignee.

In witness whereof said railroad company has caused this indenture to be signed by her president, and sealed by her corporate seal, the day and year first aforesaid, at the city of New Albany and State of Indiana.

JAMES BROOKS, *President.*

GEORGE LYMAN, *Secretary.*

Schedule of lands covered by the foregoing deed of trust, viz:

All those parts of the following-described tracts or parcels of land which are situated north of the New Albany and Salem Railroad, being lot No. 3 in Shandy's plat of survey number forty-two, in the Illinois grant, in Floyd County, Indiana, beginning at a stake 48 degrees 50 minutes west, and 11 chains and 31 links from R. Downey's corner at the Charlestou road, and running thence north 36 degrees west, thirteen claims and fifty links to the middle of Falling Run; thence up
247 said run to the corner of number two, in said plat, belonging, in 1838, to R. Downey; thence south 33 degrees, ten chains and fifty links to a stake corner of said Downey's lot, and thence south 48 degrees 50 minutes west, three chains and seventy-seven links to the beginning; also part of one and two in Shandy's plat of part of said survey, number forty-two, beginning at a sugar-tree, the northeast corner of lot number one; thence running with the line of said lot and the Charleston road, south 10½ degrees east, one chain and fifty-one links; thence south 35 degrees west, nine chains and thirty-six links; thence north 32½ degrees west, five chains and ninety-two links to the middle of Falling Run; thence up the same with the meanders thereof north 67 degrees east, two chains and thirty-four links; thence north 86 degrees, two chains and seventy-seven links, to the beginning, except above one acre heretofore sold to the city of New Albany, by William Kirkwood. The lands intended to be covered by this conveyance being those purchased of Kent and Willard, July 14th, 1852, which lie on the north side of the railroad track; also the following property in Washington County, Indiana, viz: A part of the northwest quarter of section twenty, in town. two north, of range four east, and bounded as follows:

Beginning at the line dividing sections seventeen and twenty, in the middle of the creek running through the town of Salem, running thence west eighty-one poles to the corner of said quarter-section; thence north one hundred and fifty-six poles; thence north 43 degrees east, sixteen poles; thence running in the middle of the channel of the said creek, with all its meandering, to the beginning, containing thirty-four acres, more or less, excepting so much as William Rodman sold to Burr Bradley; also excepting one-fourth of an acre adjoining the grave-yard on the south side, in a strip beginning at the southeast corner of said grave-yard, and running west as far as the present grave-yard extends. Also

the following premises in White and Stark Counties, Indiana, to wit: The southeast quarter of the northeast quarter, and the east half of the southeast quarter, and the southwest quarter of the southeast quarter of section twelve, (12,) town. twenty-eight, (28,) range two (2) west, containing one hundred and sixty acres, more or less. Also the following in the county of Stark, to wit: The west half of the northeast quarter, and the west half of the northwest quarter of section eighteen, (18,) town. thirty-two, (32,) range two (2) west, and the southeast quarter of
248 section twenty-three, (23,) town. thirty-two, (32,) range four (4) west, and the east half of the northeast quarter of section thirteen, (13,) town. thirty-two, (32,) range three (3) west, and all that part of east half of southeast half of southeast quarter of section twelve, (12,) town. thirty-two, (32,) range (3) west, which lies south of the outlet of Cedar Lake, together with all the privileges granted to Jacob Riplogle by a deed from Abram Welsh aad Elizabeth Welsh, supposed to contain ten acres. Also the following land in Tippecanoe County, Indiana, to wit: The south fraction of the northwest quarter, and the west fraction of the northeast quarter of section thirty-one, (31,) township twenty-three (23) north, of range four (4) east, except what is contained in the following, to wit: Beginning at the southeast corner of said west fraction of the northeast quarter of section thirty-one, (31,) in township twenty-three (23)north, range four (4) west, running thence west twenty-four $\frac{28}{100}$ polee to a stake in the centre of the county-road leading from Lafayette to Harter's Mills, in the direction of Crawfordsville; thence north with said county-road seventy-three $\frac{52}{100}$ poles to a stake in the center of the plank-road; thence north 29½ degrees east, eight $\frac{24}{100}$ poles, to a stake in the center of said plank-road; thence east fifteen $\frac{56}{100}$ poles to the east line of said fraction; thence south with said east line one hundred and fifteen (115) poles to the place of beginning, containing sixteen $\frac{65}{100}$ acres. Also the following land in Jasper and White Counties, Indiana: In Jasper County, the southeast quarter of section 25, town. 28, range 6 west, containing 160 acres; east half southwest quarter, section 25, town. 28, range 6 west, containing 80 acres; east half northeast quarter section 25, town. 28, range 6 west, containing 80 acres; south half southwest fractional quarter, section 30, town. 28, range 5 west, containing $69\frac{23}{100}$ acres; west half northwest quarter, section 24, town. 28, range 6 west, 80 acres; southwest quarter of southwest quarter, section 13, town. 28, range 6 west, 40 acres; southeast quarter of southeast quarter, section 14, town. 28, range 6 west, 40 acres. In White County, west half northwest fractional quarter, section 31, town. 28, range 5 west, $69\frac{57}{100}$ acres.

[L. S.] JAMES BROOKS, *President.*

GEORGE LYMAN, *Secretary.*

STATE OF INDIANA, *Floyd County, ss:*

Before me, the undersigned, a notary public in and for the
249 county aforesaid, this day personally appeared James Brooks, president of the New Albany and Salem Railroad Company, and acknowledged that he executed the foregoing conveyance for the uses and purposes therein set forth.

Witness my hand and notarial seal at New Albany, Indiana, this sixteenth day of October, 1858.

[L. S.] W. W. TUTTLE,
Notary Public.

Received for record October 8th, 1858, at 11 o'clock a. m. Recorded in deed-book, vol. 6, pages 537, 538, 539, 540, 541, 542, and 543.

JAMES G. HARRISON,
Recorder.

STATE OF INDIANA, *Floyd County, ss:*

I, John Spelman, recorder in and for said county, do hereby certify that the above and foregoing is a full, true, and complete copy of a deed, etc., executed by the New Albany and Salem Railroad Company, by its president, James Brooks, to Douw D. Williamson, trustee, as appears of record in deed-book, vol. 6, pages 537, 538, 539, 540, 541, 542, and 543 of the records of Floyd County in this office.

Witness my hand and official seal this 6th day of January, 1872.

[L. S.] JOHN SPELMAN,
Rec. F. C.

"E." Certified copy of deed from Jesse J. Brown to D. D. Williamson:

This indenture, made this 6th day of October, 1868, by Jesse J. Brown, of the city of New Albany and State of Indiana, of the first part, and Douw D. Williamson, of the city and State of New York, of the second part, witnesses that whereas the New Albany and Salem Railroad Company, by her deed dated on the 2d of September, 1857, conveyed certain lands to said Brown, which are particularly described in the printed schedule hereto annexed, to be held by the said Brown in trust to secure the payment of certain debts mentioned in said deed; and whereas the said Williamson, as a trustee, under a decree rendered by the circuit court of the United States for the district of Indiana, at its May term, 1858, in a suit in chancery, wherein said Williamson was plaintiff and said railroad company and others were defendants, has fully
250 paid said debts: therefore, in consideration of the matters aforesaid and of one dollar paid to him, said Brown quit-claims to said Williamson, as such trustee, the lands particularly described in said printed schedule, hereto annexed, being the same land conveyed by said railroad company to said Brown as aforesaid: To have and hold by said Williamson in trust for the purposes particularly mentioned in said decree.

Witness the hand and seal of said Jesse J. Brown on the day and at the city first aforesaid.

JESSE J. BROWN.

STATE OF INDIANA, *Floyd County, ss:*

Before the undersigned, a notary public of said county, this day personally appeared Jesse J. Brown, who acknowledged that he executed the foregoing conveyance for the uses and purposes therein set forth.

Witness my hand and notarial seal, at New Albany, Indiana, this 7th day of October, 1858.

[L. S.] W. W. TUTTLE, *Notary Public.*

Schedule of lands conveyed by the foregoing deed.

All those parts of the following-described tracts or parcels of land which are situated north of the New Albany and Salem Railroad, being lot number three in Shandy's plat of survey number forty-two, in the Illinois grant in Floyd County, Indiana, beginning at a stake 48 degrees

50 minutes west, and 11 chains and 31 links from R. Downey's corner at the Charlestown road, and running thence north 36 degrees west 13 chains and 50 links, to the middle of Falling Run; thence up said run to the corner of number two in said plat, belonging, in 1838, to R. Downey; thence south 33 degrees, 10 chains and 50 links to a stake, corner of said Downey's lot; and thence south 48 degrees 50 minutes west, 3 chains and 77 links to the beginning.

Also, part of one and two in Shandy's plat of part of said survey, No. 42, beginning at a sugar-tree, the northeast corner of lot number one; thence running with the line of said lot and the Charleston road south 10½ degrees east 1 chain and 51 links; thence south 53 degrees west 9 chains and 36 links; thence north 32½ degrees west 5 chains and 92 links to the middle of Falling Run; thence up the same with the meanders thereof north 67 degrees east 2 chains and 34 links;
251 thence north 86 degrees 2 chains and 77 links to the beginning, except about one acre heretofore conveyed to the city of New Albany by W. Kirkwood; the land intended to be conveyed by this conveyance being those purchased of Kent & Willard, July 14th, 1852, which lies on the north side of the railroad track.

Also, the following property in Washington County, Indiana, viz: A part of the northwest quarter of section 20, in township 2 north, of range 4 east, and bounded as follows: Beginning at the line dividing sections 17 and 20, in the middle of the creek running through the town of Salem; running thence west 81 poles to the corner of said quarter-section; thence south 146 poles; thence north 43 degrees east 16 poles; thence running in the middle of the channel of said creek, with all meanderings, to the beginning, containing 34 acres, more or less, excepting so much as W'm Rodman sold to Burr Bradley; also excepting one-fourth of an acre adjoining the grave-yard on the south side, in a strip beginning at the southeast corner of said grave-yard, and running west as far as the present grave-yard extends.

Also, the following premises in White and Stark Counties, Indiana, to wit: The southeast quarter of the northeast quarter, and the east half of the southeast quarter, and the southwest quarter of the southeast quarter of section twelve, (12,) township twenty-eight, (28,) range two (2) west, containing one hundred and sixty acres, more or less.

Also, the following in the county of Stark, to wit: The west half of the northeast quarter and the west half of the northwest quarter of section eighteen, (18,) township thirty-two, (32,) range 2 west; and the southeast quarter of section twenty-three, (23,) township (32,) range 4 west, and the east half of the northeast quarter of section thirteen, (13,) township thirty-two, (32,) range 3 west; and all that part of the east half of southeast quarter of section twelve, (12,) township thirty-two, (32,) range 3 west, which lies south of the outlet of Cedar Creek, together with all the privileges granted to Jacob Replogle by a deed from Abram Welsh and Elizabeth Welsh, supposed to contain ten acres.

Also, the following land in Tippecanoe County, Indiana, to wit: The south fraction of the northwest quarter of section thirty-one, (31,) township twenty-three (23) north, of range four (4) west, except what is contained in the following, to wit: Beginning at the southeast corner of said west fraction of the northeast quarter of section thirty-one, (31,) in township twenty-three (23) north, of range four (4) west; running
252 thence west twenty-four $\frac{28}{100}$ poles to a stake in the center of the county-road leading from Lafayette to Harter's mill, in the direction of Crawfordsville; thence north with said county-road seventy-three $\frac{52}{100}$ poles to a stake in the center of the plank-road leading from Lafay-

ette to Crawfordsville; thence north 8 degrees east thirty-four and $\frac{36}{100}$ poles to a stake in the center of said plank-road; thence north 29½, east eight $\frac{24}{100}$ poles to a stake in the center of said plank-road; thence east fifteen $\frac{56}{100}$ poles to the east line of said fraction; thence south with said east line one hundred and fifteen (115) poles to the place of beginning, containing sixteen $\frac{65}{100}$ acres.

Also, the following lands in Jasper and White Counties, Indiana: In Jasper County the southeast quarter of section 25, township 28, range 6 west, containing 160 acres; east half southwest quarter of section 25, township 28, range 6 west, containing 80 acres; east half of east quarter of section 25, township 28, range 6 west, containing 80 acres; south half southwest fractional quarter of section 24, township 28, range 6 west, 80 acres; southwest quarter of southwest quarter of section 13, township 28, range 6 west, 40 acres; southeast quarter of southeast quarter of section 14, township 28, range 6 west, 40 acres. In White County: North half of northwest fractional quarter of section 31, township 28, range 5 west, 69 $\frac{37}{100}$ acres.

Received for record October 8, 1858, at 10 o'clock a. m., and recorded in deed-book, vol. 6, pages 544, 545, and 546.

JAMES G. HARRISON,
Recorder.

STATE OF INDIANA, *Floyd County, ss:*

I, John Spelman, recorder in and for said county, do hereby certify that the above and foregoing is a full, true, and complete copy of a deed executed by Jesse J. Brown to Douw D. Williamson, as appears of record in deed-book, vol. 6, pages 544, 545, and 546 of the records of Floyd County, in this office.

Witness my hand and official seal this 6th day of January, 1872.

[L. S.] JOHN SPELMAN,
Recorder F. C.

Inventory of Louisville, New Albany & Chicago Railroad Company's road-bed from New Albany to Michigan City, including switches, side-tracks, and turn-outs.

15 passenger-cars.

253
1 passenger and baggage car.
1 mail and baggage "
2 baggage "
1 pay "
2 wrecking "
2 boarding "
11 way "
159 flat and coal "
169 box "
49 stock "
34 locomotive-engines.

MISCELLANEOUS.

Furniture, stationery, supplies, and material necessary in operating the road, and used in the various offices, depots, machine-shops, and on the line of the road; also, wood and ties belonging to said road and used in its operations; for the precise particulars of all which personal

property and materials I refer to the inventory filed in this case by the receiver, on the 10th day of March, 1871.

And afterwards, to wit: in vacation of said court, on the 27th day of March, 1872, the following further proceedings in the above-entitled cause were had, to wit:

By order of the Hon. Thomas Drummond, judge of the circuit court, the following order is made in this cause, to wit:

Circuit court of the United States, for the district of Indiana.

CHARLES E. BILL, &c.,
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al.

Before me, at chambers, March 27, 1872.

There coming on to be heard on this day the motion of the plaintiff, as trustee, to place him in possession of the railroad property, on application of the parties opposing the motion, it is postponed till the first day of the next term of the circuit court of the United States, to be held at Indianapolis, (unless for special reasons, to be made to appear, the hearing is fixed at an earlier day.) And in the mean time either party shall have the right, on reasonable notice, to take depositions of witnesses to be used on the hearing of the motion before the judge or the court; the depositions to be taken before Hon. John D. Howland, as a special commissioner, hereby appointed for that purpose.

THOMAS DRUMMOND,
Circuit Judge of 7th Circuit.

254 And afterwards, to wit, at the May term of said court, on the 7th day of May, 1872, before the honorable Walter Q. Gresham, one of the judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties by counsel; whereupon J. D. Howland, the master appointed to take the evidence and report the finding upon the claim of J. T. Haff, files his report and accompanying evidence, which is in the words following. And at the same time said claimant, by Mr. Test, his attorney, files his exceptions to said report in the words following:

And the court now makes an allowance to the master of twenty-five dollars for his services in said matter, to be taxed as costs in this case.

And at the same come the intervening defendants in this cause and move the court for leave to file their cross-bill, and tender said bill in open court. And at the same time the complainant, by Mr. Hendricks, his solicitor, moves the court to set this cause down for final hearing upon Monday next.

And at the same time the intervening defendants, by Mr. McDonald, their solicitor, moved a stay of proceedings on the supplemental bill of complaint heretofore filed, and ask leave to put upon the files the cross-bill aforesaid, in support of his present motion.

And at the same time comes George H. Chapman, esq., the receiver herein, and upon his motion it is ordered that the injunction heretofore allowed against the Greencastle Street-Car Company is dissolved.

And at the same time the said receiver, upon leave granted, files his petition to the court for instructions in substitution for a like petition heretofore filed by him, which it is alleged has been lost, and said petition is in the words following:

And afterwards, to wit, at the May term of said court, on the 8th day of May, 1872, before the honorable Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the intervening defendants, by Mr. McDonald, their
255 solicitor, and move the court for an order to examine Charles E. Bill, the complainant herein, at the bar of this court, and at the same time files an affidavit in support of said motion, which is in the words and figures following, to wit:

And afterwards, to wit, at the May term of said court, on the 31st day of May, 1872, before the honorable David Davis, one of the judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties by counsel, and the court being advised upon the motions heretofore submitted, does now decide that the motion of the defendants to stay proceedings herein until the moneys in the hands of the complainant be paid over to the receiver, be, and the same is hereby, overruled.

And further, that the motion of the defendants to file a cross-bill herein against the complainant is allowed upon the terms that said cross-bill be filed on or before Monday next, and the issues under it be formed, and the testimony under it be taken and filed by the cross-complainant by the first day of September next. And that the evidence of the defendant to the cross-bill be taken and filed by the 15th of October next; and the rebutting evidence of the complainants to the cross-bill be taken and filed by the first day of November, 1872. And the case, as well upon the supplemental bill and issues and proofs thereunder as upon the cross-bill and pleadings thereto, is set down for hearing at the next term of this court, at such convenient time as the judges may designate.

And at the same time comes George H. Chapman, esq., receiver herein, and by leave of the court files his petition for instructions in regard to certain railroad property, which is in the words following:

The undersigned, receiver in the above-entitled cause, respectfully shows to the court that, under the charter of the said defendant company, its road was extended from Michigan City westward to the State line, between Indiana and Illinois, a distance of thirty-eight miles, or about that distance; that the said thirty-eight miles of road were constructed by the Michigan Central Railroad Company, a corporation formed under the laws of the State of Michigan, under a contract, a copy
of which is set forth at length in Exhibit A, filed herewith; that,
256 at the time the undersigned was appointed receiver herein, the said thirty-eight miles of road were under the control of the said Michigan Central Railroad Company, which last-named company had been operating the same from the time of its original construction, some time about the year 1851, and up to the present time continues to use and occupy said thirty-eight miles of road.

The undersigned shows that, in April, 1868, a proceeding was instituted in the La Porte circuit court of the State of Indiana, by one William P. Rathbone, against the said defendant company, and the Michigan Central Railroad Company, under which, on the 10th day of August, 1869, the sheriff of La Porte County, in said State, sold or attempted to sell, the interest of the defendant company in said thirty-eight miles of road, to James F. Joy, for five thousand dollars, and executed a deed

in pursuance of said pretended sale to the said Joy, which deed was reported to the said La Porte circuit court at its October term, 1869, and was by the said court approved and confirmed, all of which appears of record in the office of the clerk of the said La Porte circuit court, a transcript of which record is herewith filed, marked Exhibit A, and is made a part of this petition as follows: (insert.) And the undersigned is advised that said pretended sale is void, and that the decree of the said La Porte circuit court, on which it is founded, is void for the want of jurisdiction of the said last-named court as to the said Louisville, New Albany and Chicago Railroad Company.

The undersigned suggests to the court, however, that whatever interest the defendant company had in the said thirty-eight miles of road by reason of the same having been constructed under her charter, is now deemed by the intervening defendants in the above-entitled cause to be assets of the said Louisville, New Albany and Chicago Railroad Company; and the said intervening defendants are insisting that the undersigned, as receiver, shall assert his claim, as such receiver, to the said thirty-eight miles of road. But the undersigned is not sufficiently advised as to whether the interest of the said last-named company in the same is covered by the decree appointing him receiver herein. Hence, he prays the court to give such direction in the premises as will enable him to discharge the duties enjoined by the said decree; and further says not.

GEO. H. CHAPMAN,
Receiver.

257 STATE OF INDIANA, *La Porte County, ss*:

At pleas begun and held at the court-house in the city and county of La Porte and State of Indiana, on Monday, the 18th day of October, A. D. 1869, before the Hon. Andrew L. Osborne, judge of the circuit court within and for the ninth judicial circuit of the State of Indiana.

Be it remembered that heretofore, to wit, on the 1st day of April, 1869, the plaintiff in the action of William P. Rathbone v. The Louisville, New Albany and Chicago Railroad Company and the Michigan Central Railroad Company, by Henry Crawford, esq., his attorney, filed in the office of the clerk of the La Porte circuit court his complaint herein in the following words and figures, to wit:

STATE OF INDIANA, *La Porte County, ss:*

La Porte circuit court, May term, 1869.

William P. Rathbone complains of the Louisville, New Albany and Chicago Railroad Company and the Michigan Central Railroad Company, and says that, in 1847, the New Albany and Salem Railroad Company, in pursuance with an act of the general assembly of the State of Indiana, approved January 28th, 1842, was duly organized, and in pursuance of the said original act of corporation, and sundry acts of the general assembly of Indiana amendatory thereof, the said railroad company proceeded to locate, contract, and put in operation a line of railroad from the city of New Albany, in the county of Floyd, northward through divers counties of the State of Indiana, and on the 17th day of April, 1871, as by the law thereto authorized, the said railroad company finally located the said line of railroad so as to run through the counties

of Floyd, Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, and Stark, to Michigan City, in the county of La Porte, and thence southwardly and westwardly through the counties of La Porte, Porter, and Lake, to the Illinois State line. The said New Albany and Salem Railroad Company executed five several mortgages conveying and embracing all the line of railroad from New Albany to Michigan City, and its appointments and equipments of every character and description. Said mort-
258 gages were respectively dated February 8, 1851, February 17th, 1852, November 3d, 1853, February 1st, 1855, and January 13th, 1856, and were each given to secure a contemplated issue of bonds, which said bonds have been all issued and negotiated for value by said New Albany and Salem Railroad Company, for the purpose of constructing, equipping, and operating her said line of railroad. The said New Albany and Salem Railroad Company is utterly insolvent, and has no property whatever to pay her debts, except her line of railroad and its appointments and equipments, and the said line of railroad from New Albany to Michigan City, and all and singular its appointments, equipments, and franchise, is utterly insufficient to pay the mortgage-debts, which are a first lien upon that part of the said railroad. That part of the line of road located by the said New Albany and Salem Railroad Company, between Michigan City and the east line of the State of Illinois, is not embraced in any of the five several mortgages heretofore mentioned, but it is now, and for many years has been, in possession of and operated by the Michigan Central Railroad Company, and subject to a mortgage or other lien, or incumbrance, existing by virtue of a contract between the said New Albany & Salem Railroad Company and the Michigan Central Railroad Company, the amount of which incumbrance, and the particular nature thereof, the plaintiff is unable to disclose, and he prays discovery thereof as hereinafter set forth. On the 27th day of October, 1869, the corporate name of the New Albany & Salem Railroad Company was changed to that of Louisville, New Albany & Chicago Railroad Company. On the 17th day of January, 1867, one Selah Chamberlain, by the consideration of the White common pleas court, recovered judgment against the Louisville, New Albany & Chicago Railroad Company for the sum of forty-four thousand eight hundred and twenty-three dollars; and on December 27th, 1867, the said Chamberlain caused a transcript of said judgment to be filed in the clerk's office of Lake County; and on December 27th, 1867, in Porter County; and on December 27th, 1867, in La Porte County, so that the said judgment would become a lien on the said line of railroad from Michigan City to the Illinois line, and the interest and equity of redemption of the said Louisville, New Albany & Chicago Railroad Company, in and to said property, whatever the same may be. On the day of March, 1869, the said Selah Chamberlain duly assigned
259 the said judgment to the plaintiff, and a copy of the said judgment and assignment is herewith filed and made a part hereof, marked Exhibit A. That part of the line of railroad from Michigan City to the Illinois State line is subject to the lien of the plaintiff's judgment first in order after the lien and equity which the said Michigan Central Railroad Company has in and to the property, and the same ought to be made liable to the payment of the judgment of the plaintiff, which still remains wholly unpaid, saving the rights and demands of all other prior encumbrancers; no part of the rolling-stock used upon the said line of railroad from Michigan City westward to the Illinois State line belonging to the Louisville, New Albany and Chi-

cago Railroad Company, and the plaintiff claims no lien except upon the road-bed, superstructure, track, depot grounds and buildings, water-tanks, bridges, fences, side-tracks, and the franchises to operate the same, the right of which is still in the Louisville, New Albany and Chicago Railroad Company.

Wherefore the plaintiff prays that the said defendants may be severally compelled to answer hereto, and that the Michigan Central Railroad Company may be compelled to set up and disclose what right, claim, lien, or equity she has in or upon the premises herein described, and that the amount of the same may be determined and fixed by the court, and that the plaintiff may have judgment, that the interest of the said Louisville, New Albany & Chicago Railroad Company in and to said property may be sold under such regulations as may be prescribed by the court, and the money applied towards the payment of the debt due the plaintiff, and for all further proper relief to which the plaintiff may be entitled in the premises.

HENRY CRAWFORD,
Attorney for Plaintiff.

EXHIBIT A.

Seeley Chamberlain, surviving partner of Doolittle and Chamberlain, vs. The Louisville, New Albany and Chicago Railroad Company. Judgment for $44,823.

Come now the parties, by their attorneys, and this cause being at issue, is by consent submitted to the court for trial without the intervention of a jury. Upon consideration of the evidence, the court do find that there is due the plaintiff from the defendants the sum of
260 forty-four thousand eight hundred and twenty-three dollars, by reason of the matters in the complaint mentioned. It is, therefore, finally considered and adjudged by the court that the plaintiff, Seeley Chamberlain, as surviving partner of Doolittle and Chamberlain, do have and recover of and from the said Louisville, New Albany and Chicago Railroad Company, the sum of forty-four thousand eight hundred and twenty-three dollars, together with the costs and charges in this behalf laid out and expended.

Copy of assignment.

Selah Chamberlain vs. The Louisville, New Albany and Chicago Railroad Company. White County common pleas, January, 1867. For value received the above-named judgment rendered in my favor, January 17, 1867, for $44,823, is hereby assigned to William P. Rathbone, March 23, 1869.

SELAH CHAMBERLAIN,
By HENRY CRAWFORD, *Attorney.*

Attest: DAVID D. DALE, *Clerk.*
MARCH 25, 1869.

STATE OF INDIANA, *White County, ss:*

I, David D. Dale, clerk of the common pleas court of White County, in said State, hereby certify that the foregoing is a full and complete copy of a judgment rendered in the entitled cause on the 17th day of January, 1867, in the court of common pleas of said county. Also a true copy of the assignment of said judgment as the same appears on page 178 of order-book No. 6, of the common pleas court of said county.

In testimony whereof I hereunto subscribe my name and affix the seal of said court this fourth day of May, 1869.

DAVID D. DALE, *Clerk.*
By JOHN I. HEWITT, *Deputy.*

Thereupon a summons issued out of the office of the said clerk of said court, directed to the sheriff of Floyd County, in the words and figures following, to wit:

The State of Indiana to the sheriff of Floyd County:

You are commanded to summon the Louisville, New Albany and Chicago Railroad Company, impleaded with the Michigan Central Railroad Company, to appear in the La Porte circuit court on the second day of the next term thereof, to answer the complaint of William P. Rathbone; and of this summons make due return.

261 Witness the clerk and seal of the court this first day of April, 1869.

[L. S.] JA'S H. SHANNON, *Clerk,*
By H. C. SHANNON, *Deputy.*

Which said summons was afterwards returned by said sheriff, with his return endorsed thereon in the words and figures following, to wit:

I have served the within writ on the Louisville, New Albany & Chicago Railroad Company, by reading the same to and in presence of, and by leaving a true copy of the same with Walker Mann and William S. Culbertson, directors in the within-named company, this 5th day of April, 1869.—T. J. Fullenlove, S. F. C.; served by C. W. Sandford, dep't. A summons also issued out of said clerk's office, directed to the sheriff of La Porte County, in the words and figures to wit:

The State of Indiana to the sheriff of La Porte County:

You are hereby commanded to summon the Michigan Central Railroad Company, impleaded with the Louisville, New Albany & Chicago Railroad Company, to appear in the La Porte circuit court, on the second day of the next term thereof, to answer the complaint of William R. Rathbone; and of this summons make due return.

Witness the clerk and seal of the court, this 1st day of April, 1869.

[L. S.] JA'S H. HAMMOND, *Clerk,*
By H. C. SHANNON, *Deputy.*

Which said summons was afterwards returned by said sheriff, with his return indorsed thereon in these words, to wit:

Served by handing a copy of this writ to Douglas P. Chase, a conductor on the within-named Michigan Central Railroad, April 7, 1869.

S. D. PHELPS, *Sheriff.*

And afterward, to wit, on the 3d day of April, 1869, was filed in the office of said clerk of said court, the following answer and cross-complaint of the Michigan Central Railroad Company, in these words, to wit:

262 WILLIAM P. RATHBONE
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and the Michigan Central Railroad Company.

La Porte circuit court.

The Michigan Central Railroad Company answers the complaint of the plaintiff, and specifically denies each and every allegation therein contained, and by way of cross-complaint against the plaintiff and her codefendants, the Louisville, New Albany and Chicago Railroad Company, the said Michigan Central Railroad Company says that, in 1847, in pursuance of a public law of the general assembly of the State of Indiana, the New Albany and Salem Railroad was duly incorporated, and proceeded to locate, construct, and put in operation a line of railroad from New Albany, in the county of Floyd, in a northwardly direction through the said State of Indiana; and in April, 1851, the said railroad company had, in pursuance of the original act of incorporation aforesaid, and of divers acts amendatory thereof, passed thereafter by the general assembly of the said State of Indiana, located and partially constructed a line of railroad from New Albany, aforesaid, through the counties of Floyd, Clarke, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Stark, La Porte, to Michigan City, and from thence westwardly through the counties of La Porte, Porter, and Lake to the eastern line of the State of Illinois. And the said New Albany and Salem Railroad Company had, at said date last aforesaid, only been able to construct her said line of railroad less than one hundred miles northwardly from New Albany, and the remainder of her said located line of railway was unconstructed on account of the want of means to build the same; and, being desirous to procure further means for the prosecution of the work, both by the subscription to the capital stock of said road and otherwise, entered into arrangements with the said Michigan Central Railroad Company, whereby the latter agreed to subscribe the sum of five hundred thousand dollars to the common stock of the said New Albany and Salem Railroad Company; and further agreed to advance money to build and complete the line of railroad westwardly from Michigan City to the eastern line of the State of Illinois, on condition that the said Michigan Central Railroad
263 Company should have a mortgage-lien thereupon for the agreed value of said advancement for said construction, with interest after the rate of five per cent. per annum, and the right to the exclusive possesion of the line so constructed by the advancements of the Michigan Central Railroad, and to operate the same, and receive all the rent, tolls, and incomes thereof for the term of forty years, at which time, and not before, the said New Albany Railroad Company might redeem the said line so constructed from the lien of the said mortgage, and take the road from the possession of the said Michigan Central Railroad Company by the payment of three million dollars.

And, on the 24th day of April, 1851, the said New Albany and Salem Railroad Company and the said Michigan Central Railroad, entered into a contract in writing, a copy of which is herewith filed and made a part hereof, marked Exhibit B, whereby the two contracting parties, in substance, embodied the above stipulation, and the Michigan Central Railroad Company, as required by said contract, proceeded to

make and pay said stock-subscription of the New Albany and Salem Railroad Company, and has fully paid the said sum of $500,000, and built and constructed and put in operation the said part of the line of the New Albany and Salem Railroad which lies westwardly from Michigan City, as described in said agreement, and finished the same in 1852; and has, ever since that time, and still remains in full and exclusive possession of the said line of railroad and its appurtenances, depots, shops, water-stations, rights of way, track, side-tracks, and fixtures and equipments; and has, ever since the completion of the said line, and still does, receive and exclusively enjoy all the rents, tolls, and incomes of the said line, as she was legally entitled to do under the provisions of the said agreement.

And the Michigan Central Railroad Company, further avers that she has well and faithfully performed all and singular the covenants, conditions, and requirements which, by the terms of the said agreement, she was in duty bound to perform, and has the right, under the covenants of said agreement, to remain in undisturbed possession of the said property described in the plaintiff's complaint for the remainder of the unexpired period of forty years from and after April 24th, 1851, and to enjoy for the same period the rents, tolls, and income of said property.

264 The said Michigan Central Railroad Company therefore prays that if the plaintiff receives a judgment ordering the sale of the equity of redemption of the New Albany and Salem Railroad Company (now known as the Louisville, New Albany and Chicago Railroad Company) in and to him so pledged, mortgaged, and held by the said Michigan Central Railroad Company, the court will define specially and at large the precise interest and rights which are so held by the said Louisville, New Albany and Chicago Railroad, and will further enter a decree confirming the rights, possession, and lien of this answering defendant, of, in, and to said line of railway, and stipulating that any purchaser of the equity of redemption shall not be entitled to enjoy and enter into possession of any part of the said property or receive the income thereof, until the forty years of and after April 24, 1851, shall have expired, and the said purchaser shall have paid to the Michigan Central Railroad Company the full sum of $3,000,000 so agreed to be paid as aforesaid upon the redemption of the said line of railroad; and further protecting, confirming, and securing all and singular the rights and properties of the Michigan Central Railroad Company, under said agreement; and for such further and other relief as may be necessary to protect and secure her said rights in the premises.

HENRY CRAWFORD,
Attorney for the Michigan Central R. R. Co.

EXHIBIT B.

Whereas the New Albany and Salem Railroad Company have the authority to extend their line of road from its present terminus to such point or points in the State of Indiana as may by them be deemed advisable; and whereas, they deem it important, both for the public good and their own interest, to extend their said road to Michigan City, and from thence westward to the State line of Illinois, in such direction as may be expedient to accommodate the business and travel between Southern Indiana and the west and northwest, as well as the State of Michigan and the east, and have resolved so to locate and construct their said road; and whereas, for the purpose of more speedily completing the said road,

they are desirous of procuring assistance by way of subscription to their stock, as well as otherwise; and whereas the Michigan Central Railroad Company are willing to subscribe for $500,000 of the stock of the New Albany and Salem Railroad Company upon cer-
265 tain condition, as well as to build the entire line of said road from Michigan City to the Illinois line, providing it can have the use and control of the same until the cost of same is re-imbursed to it as is hereinafter provided; and whereas, the early construction of said road from Michigan City to the Illinois line is of the greatest importance to secure the connection between the New Albany and Salem Railroad and the road in Illinois and the Michigan Central Railroad, as well as other roads that may be hereafter constructed:

Now, therefore, this indenture, made and entered into by and between the New Albany and Salem Railroad Company, of the first part, and the Michigan Central Railroad of the second part, this 24th day of April, 1851, witnesseth that, in consideration of the right to be secured by the Michigan Central Railroad Company, as is herein provided and agreed upon, the said Michigan Central Railroad Company agrees to subscribe for and take $500,000 of the capital stock of the New Albany and Salem Railroad Company, and to pay for the same in the manner following, that is to say, $25,000 on the first of September next, $25,000 on the first of March, 1852, $25,000 on the first day of September in the same year, $25,000 on the first day of March, 1853, and $50,000 at the end of every six months thereafter, until the whole of said subscription of $500,000 is paid, which payment shall be made at the office of the Michigan Central Railroad Company, in the city of Boston or New York, upon the drafts of the president of the New Albany and Salem Railroad Company.

Provided, however, and it is mutually understood and agreed that said sums shall not be called for at those points unless necessary in the construction of the main line of said road. And it is also further agreed, as one of the terms of said subscription and one of the conditions of said payments, that no more than $100,000 of said money shall be used in constructing said road south of Lafayette.

The balance thereof it is understood and agreed shall only be called for and used in the construction of said road from Lafayette to the present terminus of the road constructed or owned by the Michigan Central Railroad Company at Michigan City.

And it is further agreed by the said first party that the Michigan Central Railroad Company shall have the right to vote upon the whole of the stock standing in its name from the date of the subscription,
266 and that full-paid stock shall be issued to said company as fast as it shall make payments of the instalments of said subscription in the manner above agreed upon.

And the said New Albany and Salem Railroad Company further agrees that it will construct and finish its road from Lafayette to Michigan City, thereby forming a continuous line of railroad in connection with the Michigan Central Railroad from New Albany, in Indiana, to Detroit, in the State of Michigan, and Chicago, in the State of Illinois, within six months after the last payment shall fall due, and the said first party may be entitled to draw for the same in the manner above provided for in said subscription of the said Michigan Central Railroad Company to said stock.

And it is further mutually agreed by and between the said parties, that the passenger-depot owned, or which may at any time be owned, by the Michigan Central Railroad Company, at Michigan City, shall be used in common and for the united joint benefit of both said companies, but upon

such terms and conditions as may be hereinafter agreed upon; and also, that, upon the completion of said road from New Albany to Michigan City, there shall be some fair and equitable arrangement entered into between the said parties for the transportation of freight and passengers coming from one road and anxious of passing over the other, or any part thereof, and the mutual interchange of the cars of said parties so as to avoid the transhipment of freight and passengers at Michigan City, and for ticketing passengers through over both said roads or part thereof. And such arrangements shall be made with the Michigan Central Railroad Company, by the said first party, upon as favorable terms as shall be made with any other road which shall compete with it for travel and business.

And it is further agreed that that part of the road from Michigan City to the State line of Indiana, between that State and Illinois, shall be constructed by and under the superintendency of the Michigan Central Railroad Company and its officers and agents, and that the same shall stand pledged, and shall be, and is hereby, bargained, conveyed, and mortgaged to the said Michigan Central Railroad Company, its successors and assigns forever; and all its appointments, shops, depots, water-stations, rights of way, track, side-track, fixtures, and equipments, of every kind and description, which may hereafter be constructed or built upon the same, and also the right to construct, complete, and perfect the same with single and double tracks; and also to equip, operate,
267 and control the same when constructed; and to that end the party of the first part constitutes the said second party its successor, and assigns its agent with full power to go on and construct the said road and its appurtenances suitable and proper, and from time to time add thereto in such times and manner as may be most expedient in the judgment of said company.

And to enable that to be the most effectually accomplished, the said first party will do such acts, and take all such action as may become requisite and proper, the said Michigan Central Railroad Company paying all expenses and costs and always saving the said first party harmless and keeping them fully indemnified against all suits, actions, rights of action, and claims which may event by reason of any act done or omitted to be done by the said Michigan Central Railroad Company, its officers or agents. And inasmuch as it is uncertain how much the said road from Michigan City to the Illinois State line will cost, together with its depots, tracks, &c., and as it will be inconvenient for the said first party to give attention to the same in its details and expenses, as the parties are desirous of affixing a limit beyond which it shall not be required of the said first party to go in case it shall redeem the said road its fixtures and equipments;

Therefore it is mutually agreed that the said Michigan Central Railroad Company is entitled to a claim upon the said road and its depots, and appurtenances, and equipments, for all money invested therein, either immediately or hereafter, to the extent of one million dollars, which shall be taken and deemed a contract-price for the construction of said road liquidated and settled, whether the same shall cost more or less; and as possibly the same may cost less, and as for a long time the same may not be a profitable road except as it may contribute to benefit other roads in connection therewith, it being understood that there is a parallel road now constructing around the head of Lake Michigan, and there existing competition on the lake also;

Therefore the following terms are agreed upon as a compensation for interest upon said sum of one million dollars, viz: the said Michigan Cen-

tral Railroad Company shall operate and manage the said road from Michigan City to the Illinois line at its own expense and risk, and shall be entitled to receive the rents thereof, and shall, in addition
268 thereto, receive interest upon the redemption of said road, but at the rate of only five per cent. on the amount thereof.

And it is mutually agreed that if, at the end of forty years from the date of these presents, the said New Albany and Salem Railroad Company shall pay to the Michigan Central Railroad Company, its successors or assigns, the full sum of one million dollars, with interest thereon at the rate aforesaid, then this instrument, so far as it operates as a mortgage or pledge of said road, shall cease and become null and void; otherwise to remain in full force and virtue in law. And in the meantime the said Michigan Central Railroad shall remain in full possession and control of the said road and its equipments, and shall have full right to keep the same in repair, operate and manage the same, and reserve the means thereof, and shall proceed to construct the same at its pleasure, as soon as it may be deemed proper.

And it is further agreed mutually that, should there be any failure to redeem said road from the encumbrance of this mortgage and pledge, and the said Michigan Central Railroad Company shall find it necessary or proper to foreclose the same, then in case the same should not produce the requisite amount of money to pay the debt and interest, there shall exist no claim against the New Albany & Salem Railroad Company for any deficiency in the amount which may be realized to pay said debt; nor shall the running or other property of said road in any way be liable therefor, it being the understanding and agreement between the parties hereto that the Michigan Central Railroad Company shall rely upon the said road and its fixtures and equipments between Michigan City and the Illinois line for the payment of said debt, and interest and cost. And it is also agreed that the said New Albany & Salem Railroad Company shall in no way in the first interest be liable for the construction of the said part of road hereby mortgaged and pledged; that during the whole period of the existence of this mortgage it shall suffer no harm, or loss, or injury by reason of any default, neglect, or act of the said Michigan Central Railroad Company, and that the said last-named company shall pay and discharge all the costs of construction and repairs of said road and claims against it, and liabilities which may exist or spring up by reason thereof.

And the said New Albany & Salem Railroad Company agrees that it will not do or suffer any act to be done in their name which shall
269 in any way impair the right to use, enjoy, and control by the said Michigan Central Railroad Company any road built or constructed by them between Michigan City and the Illinois State line under this instrument; nor execute any mortgage or other lien thereupon.

And it is further agreed, for the security of the New Albany & Salem Railroad Company, that, in case the Michigan Central Railroad Company shall fail to pay any or all the instalments, or any part of any or all of the instalments of stock so to be subscribed for by it, as aforesaid, for the term of sixty days after the same be due and payable by the terms aforesaid, then the New Albany & Salem Railroad Company shall, at any time after the expiration of the said number of days, have the right to take and hold the exclusive possession of the said line of road between Michigan City and the Illinois line, suspend all rights and claims of the Michigan Central Railroad Company under this agreement until the payment of the amount in arrear shall be duly made, to-

gether with five per cent. damages on the amount so in arrears, and further damages at the rate of twenty-five cents per annum upon the amount unpaid and overdue. And if the Michigan Central Railroad Company continues to fail to make payments of any sum in arrears, as aforesaid, for the further time of six months, then the New Albany and Salem Railroad Company shall, at any time after the expiration of said six months, have the power to declare all rights of the said Michigan Central Railway Company under this agreement to be wholly forfeited and at an end.

It is also further agreed by the said party of the first part that it will establish within one year, and will continue in New York city, a transfer agency for the transfer of its stock in that city by eastern holders thereof.

In witness whereof the said first party has hereunto affixed its corporation seal by its president; and the said second party has done the same by its committee, appointed and duly authorized for that purpose the day and year first above written.

For the New Albany & Salem Railroad Co.,

[SEAL.] JAMES BROOKS, *President.*

JAMES F. JOY,

JOHN W. BROOKS,

Committee for the Michigan Central R. R. Co.

JOHN S. DAVIS.

270 And thereupon a summons issued out of the office of said clerk of said court directed to the sheriff of Floyd County, in the words and figures following, to wit:

The State of Indiana to the sheriff of Floyd County:

You are commanded to summon the Louisville, New Albany and Chicago Railroad Company to appear in the La Porte circuit court on the second day of the next term thereof, to answer the cross-complaint of the Michigan Central Railroad Company, filed in a certain action in the La Porte circuit court, wherein W'm P. Rathbone is plaintiff, and the Louisville, New Albany and Chicago, and the Michigan Central Railroad Companies are defendants. And of this summons make due return.

Witness the clerk and seal of the court, this 3d day of April, 1869.

[SEAL.] JA'S H. SHANNON, *Clerk,*

By H. C. SHANNON, *Deputy.*

Which said summons was afterwards returned by the said sheriff, with his return endorsed thereon in the words and figures following, to wit:

I have served this writ on the Louisville, New Albany and Chicago Railroad Company, by reading the same to and in the presence of, and by leaving a true copy of the same with, Walter Mann and William S. Culbertson, directors in the within-named company, this 7th day of April, 1869.

T. J. FULLENLOVE, *S. F. C.,*

By C. W. SANFORD, *Deputy.*

And afterwards, to wit, on the 7th day of May, 1869, the same being the seventeenth judicial day of the April term, A. D., 1869, of said La Porte circuit court then holden, as aforesaid, the following proceedings were had in this cause, to wit:

WILLIAM P. RATHBONE
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and the Michigan Central Railroad Company.

Come now the plaintiff and also the Michigan Central Railroad Company, by their attorneys; and the Hon. Andrew L. Osborn, the regular judge of this court, having been of counsel for one of the
271 parties hereto, touching certain of the matters involved in this action prior to his election as judge, declines to hear or determine this case; and it being in his discretion most conducive to the interest of all concerned herein, that the same should be tried forthwith during the present term of this court, calls the Hon. Charles H. Test, judge of the twelfth judicial circuit, to try forthwith the said cause, on this 7th day of May, 1869.

And, thereupon, the said Charles H. Test appears in open court, in response to said call, and assumes the bench for the purpose of the trial of this cause. And again come the parties aforesaid; and the defendant, the Louisville, New Albany and Chicago Railroad Company, being three times called, comes not, but herein wholly makes default; and it is shown to the court by the return of the sheriff of Floyd County to the process herein sued out, and to him directed, that the said Louisville, New Albany and Chicago Railroad Company had been duly served with process to appear and to answer to the complaint of the plaintiff herein more than ten days before the first day of the present term of this court, and had also been served with process to appear and answer the cross-bill filed herein by the Michigan Central Railroad Company, the 3d day of April, 1869, more than ten days before the first day of the present term of this court;

This cause is therefore set down for trial before the court without the intervention of a jury, upon the complaint and cross-bill of the Michigan Central Railroad Company, the default of the said Louisville, New Albany and Chicago Railroad Company, and the proofs adduced.

And upon consideration thereof, the court do find that the material allegations of the plaintiff's complaint, and also the cross-complaint of the Michigan Central Railroad Company, are true, as the same are therein set down; that the said Louisville, New Albany and Chicago Railroad Company, by its then corporate name of the New Albany and Salem Railroad Company, was created and organized as a corporation in 1847, under and in pursuance of a public act of the general assembly of the State of Indiana, approved January 8th, 1872; and thereafterwards, under the said original act and divers amendments thereto, the said railroad company located, constructed, and put in operation a line of railroad from New Albany, in the county of Floyd, through the counties of Clark, Washington, Orange, Lawrence, Monroe, Owen,
272 Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, and La Porte, to Michigan City; that said line of railroad and its equipment is subject to a lien of five mortgages, and that the same is entirely insufficient to satisfy the said mortgage-debts, which are permanent liens thereupon; and that the said Louisville, New Albany and Chicago Railroad Company is insolvent; that the line of railway running from Michigan City westwardly through the counties of La Porte, Porter, and Lake, to the eastern line of the State of Illinois, was located and constructed under the charter, and as the property of the said Louisville, New Albany and Chicago Railroad Company, then known as

the New Albany and Salem Railroad Company, and it is not embraced in any of the aforesaid five mortgages, but it is subject to the lien, possession, control, and mortgage of the Michigan Central Railroad Company, as is specifically set out in the conveyance of April 24, 1851, a copy of which is set out in the cross-complaint filed herein by the Michigan Central Railroad Company. And the court further finds that, on the 17th day of January, 1867, by the consideration of the White common pleas court, one Selah Chamberlain recovered judgment against the Louisville, New Albany and Chicago Railroad Company for the sum of forty-four thousand eight hundred and twenty-three dollars, and that transcripts of the record thereof were duly filed in the counties of La Porte, Lake, and Porter, as alleged in the complaint, and thereby became and constituted a lien upon the title, estate, equity of redemption of the said Louisville, New Albany and Chicago Railroad Company, in and to the aforesaid line of railroad in the said three counties last named, and that the said Chamberlain duly assigned and transferred upon the record thereof the said judgment aforesaid, to the plaintiff herein, as alleged in the complaint.

The court further finds that the material allegations in the cross-bill filed by the Michigan Central Railroad Company are true, and that the said line of railway running westward from Michigan City to the Illinois line, through the counties of La Porte, Porter, and Lake, which is now, and since its construction has been, in the possession of the Michigan Central Railroad Company, is subject to the lien, claim, and possession of the said last-named corporation, as stipulated in the said conveyance of April 24, 1851, and that the rights and liens of the plaintiffs are subordinate to the said claims and priorities of the Michigan Central Railroad Company.

273 It is therefore finally considered and adjudged by the court that the plaintiff, William P. Rathbone, do have and recover of the Louisville, New Albany and Chicago Railroad Company the sum of fifty thousand seven hundred and eighty-three dollars, principal and interest, upon the judgment recovered by the said plaintiff's assignor, and that the said sum is a lien upon the line of railway constructed, located, and operated from Michigan City, westward through the counties of La Porte, Porter, and Lake, to the Illinois State line, including the right of way and land occupied thereby, depot grounds and buildings thereon, track, bridges, switches, water-tanks, wood-sheds, fences, and all appurtenances thereto pertaining, said lien, however, being in all things subject to the paramount claims, debt, liens, and possession of the Michigan Central Railroad Company, as set out in the said conveyance of April 24, 1851; and that the estate, title, and equity of redemption of the said Louisville, New Albany and Chicago Railroad Company in all and singular to the said line of railroad and its appurtenances, ought to be sold to satisfy the lien and claim of the plaintiff.

It is further considered and adjudged that the Michigan Central Railroad Company ought to be, and are now hereby, confirmed and quieted in their rights under the said conveyance of April 24, 1851, and that the said last-named corporation are entitled to the full, complete, and exclusive possession of all and singular the said line of railroad from Michigan City westwardly to the Illinois State line, and the full power and lawful authority to hold, control, and operate the same, and receive all rents, income, and tolls therefrom, for her own use and behoof, without let or hinderance whatsoever, for the full term of forty years, from and after April 24, 1851.

And also, from and after said date continuously, until the sum of

three million dollars, which sum is by the terms of said conveyance the fixed and liquidated sum for the redemption of the property, but not payable until the expiration of said forty years, and after the said April 24, 1851, shall, together with all interest accruing after said last-mentioned date, be fully paid to the said Michigan Central Railroad Company or her assigns.

And until the expiration of the said term of forty years, and the further payment of, by way of redemption as aforesaid, the said Michigan Central Railroad Company is here confirmed and quieted in her exclusive possession, use, control, and enjoyment of the said line of railroad
274 as aforesaid, and its appurtenances, as the same is now possessed, controlled, used, and enjoyed by the said Michigan Central Railroad Company.

And the purchaser of the equity of redemption and estate of the said Louisville, New Albany and Chicago Railroad Company in and to the said line of railway and its appurt'ances and franchises which are hereby directed to be sold, shall not be permitted to enter into possession or exercise any control whatever over any part of said line or appurtenances, or disturb in the Michigan Central Railroad Company, in any manner in her possession, use, control, and enjoyment as hereby confirmed to her.

It is further ordered and adjudged that all and singular, the right, interest, estate, equity of redemption, or expectancy of the said Louisville, New Albany and Chicago Railroad Company, in and to that part of said line of railway running westwardly from Michigan City, through the counties of La Porte, Porter, and Lake, to a point on the eastern line of the State of Illinois, including the right of way and the land occupied thereby, depot-ground and the buildings thereon, superstructure and the tracks thereon, water-stations, fences, bridges, culverts, wood-sheds, and all other appurtenances thereto belonging, and also the franchise to operate the same, and collect tolls and revenues therefrom, be sold as an entirety for the purpose of satisfying the lien of the plaintiff herein, upon like notice and like manner as required by law, for the sale of lands upon execution.

And that, after deducting costs and accruing costs, the proceeds shall be applied toward the payment of the demand of the plaintiff, together with interest until paid, and if any surplus remain thereafter, the same shall be paid over to the Louisville, New Albany and Chicago Railroad Company.

And the plaintiff shall be authorized at any time after the entry and signing of this decree to sue out an order of sale hereupon, which may be directed to the sheriff of either La Porte, Porter, or Lake Counties, which order of sale shall embody a certified copy of this decree, and the said sheriff shall thereupon, in pursuance thereof, proceed to make sale of the estate, title, and equity of redemption of the said Louisville, New Albany and Chicago Railroad Company, in the manner herein directed, and shall make report of his doings in the premises at the next regular term of this court, to which time this matter is continued. Signed the 7th day of May, 1869.

CHARLES A. TEST.

275 And afterwards, to wit, on the 6th day of November, 1869, the same being the eighteenth judicial day of the October term, 1869, of said circuit court, holden as aforesaid, the following further proceedings were had in this cause, to wit:

WILLIAM P. RATHBONE
v.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and the Michigan Central Railroad Company.

Before the Hon. Charles H. Test, special judge. Now, at this time, in pursuance of the last adjournment of the cause, comes the Hon. Charles H. Test, heretofore appointed to try and determine this cause; and comes also the plaintiff by his attorney; and also Ithamar D. Phelps, sheriff of La Porte County, Indiana, and the said sheriff makes report of his doing as follows:

WILLIAM P. RATHBONE
v.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and the Michigan Central Railroad Company.

The undersigned, sheriff of La Porte County, as thereto directed by this court at its last term, respectfully reports to the court that, on the 16th day of June, 1869, there came to his hands a duly-certified order of sale, sealed with the seal and tested by the clerk of said La Porte circuit court, and embodying a copy of the decree heretofore rendered in this action, on the 7th day of May, 1869, and further commanding the undersigned to whom said writ was directed, to make sale of the particular property and interest therein directed and decreed to be sold, and to report my doings in the premises to this court at this time.

In obedience to the command of said writ, I advertised the time and place of sale for twenty days successively before the 10th day of August, 1869, by posting up notice thereof in three public places in each of the townships of the counties of La Porte, Porter, and Lake, through which any part of said line of railroad runs, and also by like notices posted for more than twenty days successively before said 10th day of August, 1869, at the court-house doors of the respective court-houses in La Porte, Porter, and Lake Counties, and also by advertisements for more than three weeks successively before said 10th day of August, 1869, in
276 the Michigan City Enterprise, and the La Porte Union and Herald, newspapers of general circulation, printed and published in La Porte County; and in the Vidette and Republic, a newspaper of general circulation, printed and published at Valparaiso, in the county of Porter; and in the Crown Point Register, a newspaper of general circulation, printed and published at Crown Point, in the county of Lake. Proof of said advertisements is herewith annexed. And on said 10th day of August, 1869, at one (1) o'clock p. m., at the court-house door, in the city of La Porte, Indiana, as directed by said writ, and in accordance with said notices and advertisements, after having had the rents and profits of the said property directed to be sold, and also the fee-simple thereof appraised as required by law, I offered the rents and profits of the said property, interest, and estate, and equity, directed to be sold for a term of years not exceeding seven, and received no bid therefor.

I then offered the fee-simple of the estate, interest, and equity of the property directed to be sold, viz:

All and singular the right, title, interest, estate, equity of redemption of the Louisville, New Albany and Chicago Railroad, in and to that part of her line of road running westwardly from Michigan City, through

the counties of La Porte, Porter, and Lake, to a point on the eastern line of the State of Illinois, including the right of way and lands occupied, depot-grounds and buildings thereon, superstructure and track thereon, water-stations, fences, bridges, culverts, wood-sheds, and all other appurtenances thereto belonging, and all the franchise to operate the same, and collect tolls and revenues therefrom, and said property was bid off by James F. Joy for the sum of five thousand dollars, that being the highest and best bid for the said property, and more than two-thirds of the appraised value thereof.

I herewith return plaintiff's receipt for the said sum of five thousand dollars, and the said plaintiff has fully paid to me the sum of $296.66 in full of all costs and commissions in this action, and said writ is entitled to a credit of $4,703.44. All of which is submitted to the court for its action.

I. D. PHELPS,
Sheriff of L. C.

Subscribed and sworn to before me, this 6th day of November, 1869.
JAMES H. SHANNON, *Clerk*,
By H. C. SHANNON, *Deputy*.

277 And the court, upon examination of the said report, and hearing evidence in support of the same, do in all things approve the said report and confirm the sale made by said Phelps, so reported therein, and orders and requires the said Phelps, as such commissioner, to forthwith prepare, execute, acknowledge, and deliver to James F. Joy, the purchaser of said property, a good and sufficient deed of conveyance for the property and interest purchased by him, as aforesaid, and thereupon the said Phelps reports to the court the following conveyance:

This indenture, entered into this sixth day of November, 1869, between Ithamar D. Phelps, sheriff of La Porte County, Indiana, as commissioner of the La Porte circuit court, party of the first part, and James F. Joy, of city of Detroit, Michigan, party of the second part, witnesseth: That, on the fifteenth day of June, 1869, there came into the hands of said party of the first part, as such sheriff and commissioner, a duly-certified execution or order of sale to him directed, sealed with the seal and attested by the clerk of the La Porte circuit court, issued on a certain judgment or decree therein rendered the seventh day of May, 1869, in a certain action therein pending, wherein one William P. Rathbone was plaintiff, and the Louisville, New Albany and Chicago Rail'oad Company and the Michigan Central Railroad Company were defendants; which said execution or order of sale commanded and empowered the party of the first part, as such sheriff or commissioner, after making publication as required by law, to sell all and singular the right, interest, estate, and equity of redemption and expectancy of the said Louisville, New Albany and Chicago Railroad Company in and to that part of the line of her railroad constructed, located, and operated from Michigan City, in the county of La Porte, westwardly through said county and the counties of Porter and Lake to a point on the eastern line of the State of Illinois, including the right of way and the land occupied thereby, depot grounds and the buildings thereon, tracks, bridges, switches, water-tanks, wood-sheds, fences, and all appurtenances thereto belonging, and also the franchise to operate the same, and receive and demand tolls and revenues therefrom, subject to the claim, possession, and lien of the Michigan Central Railroad Company, as the same is specifically described and confirmed to her by said de-
278 cree of May 7th, 1869, to satisfy the demand of the plaintiff,

Rathbone, and to report his doings in the premises to the court at its next term.

That said party of the first part, as hereby commanded, at one o'clock p. m., of the 10th day of August, 1869, being such sheriff and commissioner, as aforesaid, after advertising the time and place of sale and posting notices as required by law, did proceed, at the door of the court-house, in La Porte, Indiana, to offer the rents and profits of the said property and interest, so directed to be sold for a term of years not exceeding seven, and receiving no bid therefor and thereupon, offered and sold all and singular the right, title, interest, and equity of redemption of the said Louisville, New Albany & Chicago Railroad Company, as hereinbefore specifically described to James F. Joy, the party of the second part, for the sum of five thousand dollars, that being the highest and best bid therefor, and more than two-thirds the appraised value thereof.

That the party of the first part, in accordance with the command of said writ, reported to the La Porte circuit court all his doings thereupon and the sale aforesaid, whereupon said court, on the 6th day of November, 1869, in all things approved and confirmed said sale, and ordered the party of the first part to prepare, execute, acknowledge, and deliver to the party of the second part a good and sufficient deed, conveying to him all and singular the property so sold, as aforesaid.

Now, therefore, in consideration of the premises and the payment by said party of the second part of the sum of five thousand dollars, so bid by him for the property, and in obedience to the order of court requiring him to execute this conveyance, the said Ithamar D. Phelps, as such sheriff and commissioner, does, by these presents, bargain, sell, convey, and confirm unto the said James F. Joy, all and singular, the property and interests so purchased by him and described as all the right, title, interest, estate, equity of redemption, and expectancy of the said Louisville, New Albany & Chicago Railroad in and to that part of the line of her railroad constructed, located, and operated from Michigan City, in the county of La Porte, westwardly through said county and the counties of Porter and Lake to a point on the eastern line of the State of Illinois, including the right of way and the land occupied thereby, depot ground and the buildings thereon, tracks, bridges, switches, water-tank, wood-sheds, fences, and all appurtenances thereto belonging, and also the franchise to operate the same, and re-
279 ceive and demand tolls and revenues therefor, subject to the possession claim and lien of the Michigan Central Railroad Company, as the same is confirmed to said corporation by the said decree of May 7, 1869.

To have and to hold the said property hereby granted to the party of the second part, his heirs and assigns forever.

In witness whereof the party of the first part has hereunto set his hand and seal this 6th day of November, 1869.

[SEAL.] I. D. PHELPS,
Sheriff L. C. & Commissioner.

STATE OF INDIANA, *La Porte County, ss:*

Before me, James H. Shannon, clerk of the La Porte circuit court, personally appeared the above-named I. D. Phelps and acknowledged the execution of the above conveyance.

Witness my hand and the seal of said court, November 6, 1869.

[SEAL.] JA'S H. SHANNON, *Clerk.*
By H. C. SHANNON, *Deputy.*

And the said deed is examined and approved by the court, and the approval endorsed thereupon in open court, and the said Phelps is ordered to deliver said conveyance to the said James F. Joy, such purchaser, as aforesaid.

CHARLES H. TEST.

STATE OF INDIANA, *La Porte County, ss:*

I, James H. Shannon, clerk of the La Porte circuit court, hereby certify that the above and foregoing is a full, true, and complete transcript of the proceedings and judgment of said court in the above-entitled cause, as the same appears of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at La Porte, on this, the 4th day of September, A. D. 1871.

[SEAL.] JA'S H. SHANNON, *Clerk.*
By H. C. SHANNON, *Deputy.*

And afterwards, to wit, at the May term of said court, on the 1st day of June, 1872, before the Hon. David Davis, one of the judges, as aforesaid, of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now John Savage Shaw, Laura W. Shaw, Laura H. Shaw, Frank E. Shaw, Gideon Shaw, Helen Shaw, James E. Emerson,
280 (administrator of Charles N. Emerson, deceased,) Blanch V. Babcock and Myron Babcock, her husband, Gideon Putnam and Stella C. Putnam, his wife, Henry W. Shaw, and Avery V. Williams, by Messrs. McDonald, Butler and McDonald, Samuel A. Huff, esq., James Hughes, esq., and M. M. Ray, esq., their solicitors, and file their cross-bill against Charles E. Bill, trustee, &c., and against the Louisville, New Albany and Chicago Railroad Company, as follows, to wit:

John Savage Shaw, Laura W. Shaw, Laura H. Shaw, Frank E. Shaw, Gideon Shaw, Helen Shaw, James E. Emerson, (administrator of Charles N. Emerson, deceased,) Blanche V. Babcock and Myron Babcock, her husband, Gideon Putnam and Stella D. Putnam, his wife, Henry W. Shaw, and Avery V. Williamson, stockholders and bondholders of said railroad company, who have, heretofore, been admitted by the court to defend in their own right, by leave of this court first had and obtained, do bring and file this their cross-bill, against the said Charles E. Bill, trustee as aforesaid, and the said Louisville, New Albany and Chicago Railroad Company; and, complaining, charge as is charged in the supplemental bill of the said Bill, trustee, that the said corporation, then known as the Louisville and Salem Railroad Company, during the years from 1849 to 1855, inclusive, built, constructed, and equipped a railroad from the city of New Albany to Michigan City, in the State of Indiana, of the length of about 288 miles, and located and partially constructed a branch road from Gosport, in the county of Owen, in said State, to the city of Indianapolis. They further charge that, at the dates mentioned in said supplemental bill, namely, Feb. 8, 1851, Feb. 14, 1852, Nov. 3, 1853, Feb. 1, 1855, and Dec. 21, 1856, the said corporation, by the corporate name, executed trust-deeds as mortgages bearing dates, at the respective dates above-mentioned, to secure the payment of certain bonds issued by said company, to borrow money to construct its line of road, and furnish proper equipments therefor. These defendants, further complaining, would show to the court that, on the 1st day of December, 1858, in pursuance of the decree made in this cause on June 23, 1858, that

Douw D. Williamson, the trustee named in the several mortgages given to secure the payment of said bonds, took possession of the said railroad and the said branch thereof, together with all the other property owned by the said railroad company, as the trustee of this court; that he continued to hold said railroad and property in trust, as aforesaid, until some time in the year of 1864,
281 but wholly failed to render any account of his said trust to this court; and at the instance of George F. Talman and his associates, Frederick Schuchardt, James H. Banker, Edward Minturn, Moses Taylor, and John Stewart continued to hold the possession of said railroad and property until about the 1st day of October, 1868; that the said George F. Talman and his said associates were, in 1864, and ever since have been, the holders and owners of a large portion of the bonds secured by the mortgages of 1851 and 1852, except about $30,000 in amount of principal of such bonds; that, prior to the 1st day of October, 1868, the said Talman and his associates, for themselves and the said persons for whom they were agents as aforesaid, caused and procured the said Douw D. Williamson, in violation of his said trust under the decree of June 23, 1858, and without having rendered any account thereof to this court, to institute a proceeding in the common pleas court of White County, in the State of Indiana, for the foreclosure of all of said mortgages under which proceedings, at the instance and by the procurement of the said Talman and his said associates, the said road, with all the other property so held by the said Williamson, except the said Gosport branch, was placed in the hands of one James F. Joy, as one of the holders of the bonds secured by the mortgages of 1851 and 1852; that, up to the time the said Williamson so parted with the possession of said property, he and the said Talman and his said associates had wholly failed to render any account to this court of the trust committed to the said Williamson, under the decree of June 2, 1858; and that at no time has such account been rendered to this court; that the said Joy, pretending to act as receiver of said common pleas court of White County, continued to hold the possession of said road and property until the 10th day of June, 1869, well knowing at the time he took possession thereof as aforesaid, of the pendency of this suit and the character of the trust committed to the said Williamson by the decree of June 23, 1858. And these defendants charge that, at no time, has the said Joy rendered to this court any account of his relation to said road and property; that, about the 10th day of June, 1869, the said George F. Talman and his said associates, by the consent of the said James F. Joy, succeeded to the possession of the said road and property, except said Gosport branch, claiming that they had become the owners thereof, to the exclusion of all the other parties, either as bondholders or stock-
282 holders of said company, as purchasers at a sale made by the sheriff of said county of White, under the decree ot the said common pleas court, under the proceedings so instituted there.

And these defendants charge that the said George F. Talman and his said associates, and the bondholders for whom they were agents as aforesaid, at the time they caused said proceeding to be instituted in White County, had knowledge of the pendency of this suit, and of said decree of June 23, 1858, and of the decree of December 16, 1858, made herein, as well as of all the other proceeding in this cause; that the said Talman and his said associates, from the time they so succeeded to said road and property, continued to hold the same and to enjoy the income thereof until, by the order and decree of this court, entered herein on the day of November, 1870, and the writ of assistance issued in pur-

suance thereof on the day of December, 1870, the same were placed in the custody of the Hon. Geo. H. Chapman, receiver of this court, and that at no time while the said property was so held by the said Talman and his said associates, or since, has any account thereof been rendered to this court by them or by any one in their behalf. And these defendants further show that, for some time after pretended sale by the sheriff of White County, the proceedings so instituted in the common pleas court of White County, remained pending therein, and that, on the day of August, 1869, the said Douw D. Williamson departed this life, and the said Charless E. Bill, who is named in the said several mortgages, except the one of December 15, 1856, as the next alternate trustee, with full knowledge of the pendency of this suit, at the instigation, and by the procurement of the said Talman and his said associates, on the first day of December, 1869, caused himself to be substituted in the place of the said Williamson, as the plaintiff in the proceedings so pending in the said White common pleas court; that, at the time he so caused himself to be substituted as plaintiff in that court, an order had been mnde herein, requiring him to cause himself to be made the trustee-complainant herein in this court, of which the said Bill had notice; but these defendants charge that the said Charles E. Bill, complainant herein, in violation of his trust, from the time of the death of said Williamson, has been, and still is, an instrument in the hands and under control of the said Talman and his said associates; and at their instigation, and by their procurement, he disavowed his trusts under
283 the said mortgages, and refused to recognize the jurisdiction and authority of this court over the said trusts until such recognition was extorted from him in an adversary proceeding instituted by defendant, John Savage Shaw, for himself and the other defendants herein, and that both the said Bill and the said Talman and his said associates, up to the time that said recognition was so extorted from them, persistently claimed that the trust created by the said several mortgages had been fully executed. And these defendants, further complaining, show, that, as to the interests held by the said Talman and his said associates, and the persons for whom they were agents as aforesaid, that said trusts had fully terminated. They charge that the ten and eight per cent. bonds held by the said Talman and his said associates, and by those for whom they were agents as aforesaid, were, during the year 1869, voluntarily surrendered and converted into the stock of the said company under its corporate name of the Louisville, New Albany and Chicago Railway Company, and that each and all of the said holders of said ten and eight per cent. bonds, prior to the filing of the supplemental bill of complaint herein, had voluntarily accepted stock representing their proportionate share of the railroad and property of said company; that by this means the bonds secured by the mortgage of 1851 and 1852, except as to about $30,000 thereof not held by the said Talman and his associates, or by the persons whom they represented, were extinguished, leaving only a lien by virtue of the said mortgage of 1851 and 1852 upon the property covered by the said mortgage and the amount of the said $30,000 and the interest thereon. These defendants, further complaining, show that they are ignorant as to who are the holders of the outstanding bonds of 1851 and 1852, and also as to what proportion of said thirty thousand dollars is of the ten and of the eight per cent. bonds, respectively. They charge, however, that the supplemental bill of complaint herein, was filed at the instance, and by the procurement of the said Talman and his associates; and that none of the holders of said funds that have not been so surrend-

ered and canceled, have applied to the said Bill to proceed with said foreclosure. These defendants expressly charge that the said suit of foreclosure commenced by the said Douw D. Williamson in the White common pleas court, as aforesaid, was so commenced and prosecuted by the order and direction of said Talman and other bondholders of 1851 and
284 1852, and parties in interest whose names are hereafter set forth, and was the result of a conspiracy formed by said parties to evade the jurisdiction of this court, and the force and effect of the decrees and decretal orders entered by this court in this cause, and especially the decrees of June 23d, 1858, and December 16th, 1858, to enable the said parties to cheat and defraud these defendants, and others in like condition, out of their rights as stockholders acquired under said decree, and the said Douw D. Williamson was only an instrument in their hands to accomplish said purpose. To that end the bill filed in said White common pleas court purported to be for the foreclosure of the equity of redemption of the several mortgages as trust-deeds issued by the said railroad company, and herein before referred to; and the decree rendered in said court on said bill in pursuance of said conspiracy, sought to extinguish the equity of redemption in all the premises described in the several trust-deeds or mortgages, and provided that the proceeds of the sale on said decree should be first applied to the payment of the principal and interest due on the bonds issued, the trust-deeds, executed in 1851 and 1852, and hereinbefore referred to before any part of the same should be applied on the bonds issued under any of the other trust-deeds executed by said railroad company and embraced in said decree. That said decree was so framed for the fraudulent purpose of enabling the said Talman and his coconspirators hereinafter named, the holders of bonds under the trust-deeds of 1851 and 1852, and parties interested in the re-organization of said railroad company in hostility to the interests of these defendants and others, to control the property of the said railroad company, and to so re-organize said railroad company as to destroy the property and rights of these defendants and others standing in like relation to said property with them, and the more effectually to accomplish their said purpose they fraudulently procured to be computed and incorporated into said decrees the interest of the said bonds, issued under the trust-deeds of 1851 and 1852, which had been canceled by the decrees of this court, made on the 23d of June, 1858, and December 16th, 1858, and wholly ignored the rights of these defendants and others, as provided for in said last named decree.

These defendants further charge that, after the sale in the manner above set forth under said decree of the White common pleas court,
285 that the re-organization of said company upon the basis of the bonds issued under the mortgages of 1851 and 1852, and the issuance of stock in the manner hereinbefore described was, in furtherance of said fraudulent purpose, to deprive these defendants of all right or interest in the property of said company, and all right of control over the same either as stockholders under the terms of the decree of this court above referred to or as holders of bonds issued under the trust-deeds of 1853 and 1855, executed by said railroad company. These defendants charge that the conspiracy hereinbefore charged, was formed or entered into, on or about the month of April, 1867, at the city of New York, by the following-named persons, to wit: Frederick Schuchardt, James H. Banker, George F. Talman, Moses Taylor, Edward Minturn, Charles P. Leverick, John Stewart, Charles E. Bill, James F. Joy, and George L. Schuyler, and that all of said parties were

at the time holders of the bonds of 1851 and 1852, and became interested in the same at the instance of said bondholders for the purpose of aiding said bondholders to carry into effect the purpose of said conspiracy.

That Frederick Schuchardt, James H. Banker, George F. Talman, Moses Tayler, Edward Minturn, Charles P. Leverick, and John Stewart, were holding large amounts of the said bonds of 1851 and 1852 in their own right, and were also agents and attorneys in fact for other holders of said bonds, afterward surrendered in said arrangement; and, in the organization of said railroad company, in pursuance of said conspiracy, and among those who became so interested for the purpose aforesaid were Charles E. Bill, trustee and complainant herein, James F. Joy, who became one of the attorneys of said conspirators, and afterward applied for and was appointed receiver of said railroad company under the order of the White common pleas court, and George L. Schuyler, who became president of the pretended railroad company organized in pursuance of said conspiracy, and known as the Louisville, New Albany and Chicago Railway Company; that the property and franchise of said railroad company was in the hands of the said Joy, under the pretended receivership of the said White common pleas court, from the first of October, 1868, to June, 1869, at the time of the pretended organization of the pretended Louisville, New Albany and Chicago Railway Company; and during all that time he received and controlled all the receipts and revenues of said railroad franchise and property, and has not in any manner accounted to this court
286 for the same; that the exact amount of moneys received by the said Joy, as aforesaid, is unknown to these defendants; but they charge that it amounts to $1,000,000. And inasmuch as he intruded himself into the possession of said property, in violation of the authority of this court, and in disregard to the rights of these defendants under the decrees of this court, and being so in possession of his own wrong, these defendants pray that such action will be taken by this court as will protect their rights in the premises, and vindicate the authority of this court. That, upon the formation of said pretended company in June, 1869, the following persons became its pretended directors, to wit: George F. Talman, Moses Tayler, Frederick Schuchardt, James H. Banker, Edward Minturn, Charles P. Leverick, John Stewart, James F. Joy, George L. Schuyler, John Jacob Astor, Jonathan F. Wells, Isaac Bell, and Roswell G. Rolster, all of whom were in said conspiracy, or were represented in interest by those who were.; that upon the formation of said pretended company all of the bonds of 1851 and 1852, except the $30,000 aforesaid, were surrendered and cancelled, and the proceeds converted into the stock of the said pretended railway company, in accordance with the terms of an agreement, a copy of which is attached to the cross-examination of George F. Talman, a copy of which these defendants also make an exhibit to their cross-bill, marked A; that, upon the formation of said pretended company, in June, 1869, aforesaid, the said George L. Schuyler became the pretended president of said railway company, and the management and control of the railroad aforesaid, and its franchises, were placed, by said pretended directors, into his possession, and from that time until the day of December, 1870, he, the said Schuyler, received all the earnings and revenue of said road, and the income arising therefrom, to the amount of $180,000, was by his and the direction of said pretended board, taken beyond the then jurisdiction of this court and distributed among the stockholders of said pretended company, as dividends

on their stock aforesaid; that the action of said pretended board of directors, and the said Schuyler as their agent, was in violation of the authority of this court, and the intermeddling of the said Schuyler and the said directors in the same being of their own wrong, they are answerable to this court for their action in the premises as trustees;

287 and these defendants pray that such action may be taken by this court in the premises as will vindicate its authority and protect the rights of these defendants.

These defendants are not informed at what time the said Bill became a stockholder in said pretended corporation, and a party to said conspiracy, but they charge that, some time prior to his appearance in this court as alternative trustee, stock to the amount of $5,000 was issued to him in said pretended railway company, which he still holds, and that he, as such stockholder, received as dividends his share of the $180,000 so distributed as aforesaid, and that he received said dividends, or some part thereof, after he had been notified by this court to appear in this court as the successor of the said Douw D. Williamson, in said trusts and in said cause, and after this court had decreed that possession and control of the said railroad property was still subject to the orders of this court, and they charge that, at the time he entered his appearance in this cause, in pretended compliance with the order of this court, and from then, he was, and is, interested in the said pretended railway company, as a stockholder thereof, and was and still is actively engaged in confederating with the said holders of the bonds of 1851 and 1852, in the conspiracy aforesaid, and is the chief instrument by which they yet hope to evade the effect of the decrees of the court heretofore entered as aforesaid.

These defendants charge that, by reason of the fraudulent conspiracy aforesaid, culminating as it did, in the reorganization of the said railroad company on the basis of the bonds of 1851 and 1852, and in the issuance of stock to said conspirators, in lieu of said bonds, and in the fraudulent and unlawful possession of said railroad property by said conspirators and their agents, all of which was in defiance of the authority of this court, and in fraud of the rights of these defendants and others, obtained and held under the said decree, that the equities of said holders, except as to *to* that portion of said bonds not thus concerned, as represented in said fraud, and amounting to some $30,000 as aforesaid, are barred as against these defendants, and that the said holders, or their said agent and emissary, the said Bill, will not be permitted in a court of equity to assert as against these defendants a prior equity in said property, nor will equity permit them to, under their said acts of cancellation, give them a standing in court to be relieved from the consequences of their own fraudulent acts.

288 These defendants further state that the supplemental bill filed in this court by the said Charles E. Bill, is filed in the interest alone of the holders of the bonds of 1851 and 1852, called the 10 and 8 per cent. bonds, who were parties to the said conspiracy, and participated in the fraudulent purpose of depriving these defendants and others standing in like relation with them to said railroad property, of their rights, and who participated in the illegal and fraudulant organization of the said railway company, and were stockholders therein by virtue of the surrender of their said bonds in the manner before stated; that, in said supplemental bill, the said complainant ignores all the rights of the holders of bonds (among whom are a part of these defendants) issued under the trust-deeds of 1853 and 1855, although he, the said Bill, was the alternate trustee of Douw D. Williamson, for the holders

of the last-named bonds, as well as the bonds of 1851 and 1852; and although, as these defendants charge, it was well known to him at the time the said supplemental bill was filed, that there were bonds of 1853 and 1855 outstanding and unsatisfied and uncancelled, and that had not been surrendered under the decree of the court above referred to.

These defendants charge that Gideon Putnam, one of the defendants, is the owner in his own right of a bond for $1,000, and interest, issued under the trust-deeds of 1855, and numbered 156; that Frank E. Shaw, Gideon Shaw and Ellen Shaw, children of Robert F. Shaw, deceased, others of these defendants, are the owners of four bonds of the series known as income-bonds, December 1, 1855, for the sum of $500 each, with interest, and numbered 70, 76, 194, and 559; also of the bonds issued under the trust-deeds of December 1, 1853, eight bonds of $1,000 each, with the interest-coupons attached, and numbered 24, 40, 234, 391, 392, 393, 397, and 756, and also of the series of February, 1855, nine of $1,000, with interest-coupons attached, and numbered 209, 210, 235, 236, 405, 646, 647, 649, and 650; and the said defendant, John Savage Shaw, is the owner of one bond of the issue of February, 1855, for $1,000 and interest, but the number thereof is not known to these defendants; that all of said bonds are outstanding and uncanceled, and have not been, nor has either of them been, surrendered under the decrees of this court, above referred to, and they are entitled to protection in any decree rendered by this court in the premises.

These defendants charge that in the original bill of complaint
289 filed in this court by Douw D. Williamson, deceased, all of said trust-deeds were in substance set forth, and the respective rights and equities of the bondholders of the several series of bonds in said mortgaged property were submitted to the court, so that a complete decree could be made in which the several equities of said holders should be fully settled and adjusted; but the said Bill, successor to the said Williamson, in his supplemental bill by attempting to ignore the rights and equities of the holders of the bonds issued under the trust-deeds of 1853 and 1855, and the rights of the stockholders, who had become such under the decrees of this court, and on account of bonds surrendered under said decree, has attempted to compass and secure by a decree of this court, the same fraudulent purpose that was sought to be obtained by the conspiracy in pursuance of which the proceedings in the White common pleas court, and subsequent re-organization under said proceedings, and to deprive these defendants, and others standing in like relation to the property of said company, of all their just rights and equities in the premises.

These defendants further charge that the said several trust-deeds executed as aforesaid by said railroad company, in the said years of 1851 and 1852, 1853 and 1855, as well as those represented by the said Bill in his supplemental bill, filed in behalf of the holders of the 8 and 10 per cent. bonds, secured by the trust-deeds of 1851 and 1852, as also the trust-deeds of 1853 and 1855, under which the rights of these defendants accrued, were, each and all, part and parcel of a series of trust-deeds executed by said railroad company, while said company was engaged in constructing her said road, and were so executed, and the bonds provided for in the several deeds, were issued and negotiable for the express purpose of raising money to be used and expended in building and equip'ing her said road, and it was the intent and purpose of said deeds to secure to the holders of the bonds issued, in pursuance of them, a special lien on certain parts of the equipments and machinery aforesaid, in the purchase of which the money so raised has been applied; and,

therefore, the said Douw D. Williamson, was selected and constituted a common trustee for the holders of all the bonds so issued under the several trust-deeds aforesaid; that, at the time the first deed was executed, being the one bearing date 1851, and extending, so far as the general property of the railroad company was concerned, from New
290 Albany to Gosport, but little work had been done on even that part of the line embraced in the mortgage clauses of the deed, and no machinery or rails of any consequence had been purchased; and it was well understood that more money than could be realized on the bonds provided for in said deed would have to be raised to fully build and equip that part of the road embraced in said mortgage, and therefore the lien of said mortgage or trust-deed was, by the terms thereof, limited to the right of way, and *and* land occupied by said road between the points aforesaid, and the superstructure and tract*s* thereon, and all rails, and other material used therein or procured therefor, inclusive of all iron rails purchased, or to be purchased, or paid for with the above-described bonds, or money obtained therefor, and the machinery purchased with the same. And these defendants aver that, in each of the said trust-deeds so constructing said series, the same words of special lien and limitation were inserted, and that the trust-deeds of 1853 and 1855, under which the rights of these defendants accrued, "the iron rails purchased or to be purchased and paid for with the bonds issued under said deeds or the money obtained therefor, and the machinery purchased with the same," were specially pledged as a security for the payment of said bonds.

These defendants charge that, at the time these trust-deeds of 1853 and 1855 were respectively executed, the bonds known as the 8 and 10 per cent. bonds, and secured by the trust-deeds of 1851 and 1852, had been negotiated, and the proceeds thereof had been invested in the construction of the said road, and in iron rails and machinery for the said road, and the liens of the said trust-deeds of 1851 and 1852, attached to such iron rails and machinery so purchased as aforesaid; but they charge that a large portion of the iron rails and machinery necessary for the completion and equipment of the said road, still remained unpurchased and unpaid for; and they further charge that this deficiency was supplied by the bonds issued under the trust-deeds of 1853 and 1855, or the funds arrising from the sale of said bonds, and that the iron rails and machinery so purchased and paid for were of the value of the bonds negotiated and sold, and that said rails and machinery, or the renewals thereof, are still in and upon said road, and form a part of the tangible property of said road.

These defendants are not informed as to just what part of the road was constructed with the iron rails thus furnished and paid for, nor what part of the machinery was purchased with the funds realized
291 from the sale of said bonds, but they charge that the construction-account, and other proper accounts of the then New Albany & Salem Railroad Company, now the Louisville, New Albany & Chicago Railroad Company, now remaining in the office of said railroad company, all disclose the facts in regard thereto, and will support the charge herein made by these defendants.

They further charge that the proceeds of the bonds held by them, as well as of the bonds surrendered under the decree of this court, were invested in said rails and machinery, and were and are entitled to the specific lien in said trust-deeds provided, to the exclusion of the holders of the bonds of 1851 and 1852; and that as to such property these defendants have, by virtue of the premises, a superior equity to

the holders of the eight and ten per cent. bonds, whose rights and interests are especially represented by the said Bill, if it should he held by this court that these said bonds as to these defendants had not been affected by their fraudulent acts as above charged.

These defendants show that, so far as they are stockholders in the railroad company known as the Louisville, New Albany and Chicago Railroad Company, they became such by the surrender of the bonds of said company, issued under the trust-deeds of 1853 and 1855, pursuant to the terms of the decree entered in this cause by this court, on the 16th day of December, 1858, and which bonds were referred to in said decree as the second, third, and income bonds; and that by the terms of said decree, they, and the holders of like stock, were invested with all rights and privileges of the New Albany and Salem Railroad Company, now the Louisville, New Albany & Chicago Railroad Company and all its property, both real and personal, and all its franchises and rights of way, subject only to such liens as are specifically named in said decree, and in the decretal order of June 23, 1858. Among the liens thus referred to, and the only one now outstanding, were the bonds of 1851 and 1852, called in the said decree the first-mortgage bonds; and these defendants charge that, by reason of the provisions of the several trust-deeds hereinbefore set forth with regard to the purchase of iron rails and machinery, and the specific liens thereon in favor of the bonds of the several series of trust-deeds in favor of those bonds, the proceeds of which were applied to the payment of such iron rails and machinery,

292 no lien ever attached or existed in favor of the holders of said bonds of 1851 and 1852, as against the holders of the bonds of 1853 and 1855, or against the holders of stock issued in lieu of said last-named bonds. As to so much of the property of said railroad company so transferred to said holders of the second, third, and income bonds, as consisted of iron rails and machinery purchased, with the proceeds of said last-named bonds, or the renewals of the same, and as to such portion of the property of said railroad company so transferred to them by the terms of said decree of December 16, 1858, they took the same, and are now entitled to hold it free from any lien or claim of the holder of the said bonds of 1851 and 1852.

These defendants further charge that they are holders of said stock so issued under the decree aforesaid, on account of second, third, and income bonds surrendered, as follows: The said defendant John Savage Shaw, is the owner of 1,090 shares of stock of each; the said defendant Laura W. Shaw, is the owner and holder of 500 shares of said stock; Jennie E. Emerson, administratrix of the estate of Charles M. Emerson, is the holder and owner of 400 shares; August J. Emerson, administrator of Edward B. Emerson, deceased, 500 shares; Blanche V. Babcock, wife of Myron V. Babcock, 600 shares; Gideon Putnam, 300 shares; Stella C. Putnam, 500 shares; Henry W. Shaw, 400 shares; and A. V. Williams, 100 shares.

These defendants further charge that a valuable piece of property, being part and parcel of the property so transferred to them and other holders of stock created by the surrender of the second, third, and income bonds aforesaid, to wit, the right of way and road-bed, and grade of that part of the then New Albany and Salem Railroad line, known as the Gosport branch, extending from the town of Gosport, in the county of Owen and State of Indiana, to the city of Indianapolis, and sold, or pretended to be sold under the order of this court, obtained at the instance Douw D. Williamson, the then trustee, for a grossly inadequate price, which order was obtained at a time

when the said Williamson, influenced by the said George F. Talman, James F. Joy, George L. Schuyler, and other co-conspirators abovenamed, was making application, in disregard of the jurisdiction of this court, to the White common pleas court, for the fraudulent and void order and decree of foreclosure of the said mortgage or trust deeds; but these defendants aver that said sale has never been confirmed by this court, and that therefore their rights in said property has never been
293 divested, and they pray the court not to confirm the same. These defendants claim for themselves and other holders of the bonds known as the second, third, and income bonds, and themselves and others, holders of the stock of said railroad company issued in lieu of such bonds as were surrendered under the decree of this court above referred to; that they are, under the terms of said mortgages or trust-deeds, so far as they hold bonds secured by such deeds, entitled to an account of the iron rails and machinery purchased with the proceeds of such bonds, freed from the claim of any prior mortgage or bonds issued in pursuance of any such prior mortgage; and, so far as they are holders of stock issued on account of bonds so surrendered as aforesaid, that they are entitled to hold all such property so purchased with the proceeds of the bonds thus surrendered, freed from any claim of such prior mortgages, as bondholders; and that the only holders of the eight and ten per cent. bonds now entitled to a foreclosure of the mortgages or trust-deeds of 1851 and 1852, are those (amounting to about $30,000, in all) who have not surrendered and cancelled their said bonds, and converted the same into stock in the manner above set forth for the fraudulent purpose hereinbefore charged. These defendants charge that the said Bill, trustee as aforesaid, has wholly disqualified himself from acting as a trustee in any of the matters arising out of the bonds or trust-deeds of 1853 and 1855, by becoming a partizan for the holders of the bonds of 1851 and 1852, and their confederates, and in lending himself a willing instrument in their hands in their attempt to perpetrate the frauds aforesaid. They also charge that George L. Schuyler and James F. Joy, two of the conspirators above named, are and have been since the day of December, 1870, in contempt of the orders of this court made in this cause, as shown by the reports of the receiver appointed by the court to receive and hold the possession of the property and income of said railroad company pending this litigation, and which reports are on file in this cause, and to which for greater certainty they respectfully refer this honorable court; and they charge that said contempt of the orders of this court by said Schuyler and Joy, has been committed and persevered in with the knowledge and concurrence of the said Bill and the holders of the eight and ten per cent. bonds, who are pressing the proceedings under the supplemental bill filed by the said Bill, and for whose benefit alone it is prosecuted; and being in contempt, and
294 standing in defiance of the orders of this court, the said Schuyler, Joy, and their confederates are seeking, through the instrumentality of Bill, in his claimed character as trustee, to regain possession of the mortgage property.

They farther charge that, by reason of the premises herein named, an accurate knowledge of which was not obtained by them until the facts came out in cross-examination under the leave and order of this court, of George F. Talman, George L. Schuyler, and other conspirators, the rights and interests of these defendants and others standing in like relation to the property and rights of said railroad company, cannot be guarded and protected by this court without it being permitted to them to wholly deny any right of the said Bill to act as their trustee, and to

disclaim any act he may seek to do in their name, and to be permitted by this court to stand in their own right and for themselves; and inasmuch as the interests he has espoused are directly opposed to their rights and equities, these rights and equities can only by protected by permitting them in their own right and for themselves to file this cross-bill, and thereunto pray the court to guard and protect their rights and equities aforesaid.

And as a further and additional cause entitling them to file their cross-bill in this behalf, these defendants say that, upon the appointment of the said Douw D. Williamson, as special trustee, under the order and decree of the court above referred to, pursuant to said decree, the said Williamson took possession of all and singular the property and franchises of said railroad company, and received its income and earnings; and, some time thereafter, but at which particular time these defendants are not informed, the said railroad company virtually ceased to keep up any organization, and left in the entire control of the said Williamson all the business and operation of said railroad company; and from the time the said Williamson was so appointed by this court to the time of his death, he had absolute control as well of the organization of said railroad company as of the property and income thereof; and that no report has ever been made by him, or any one acting as his successor, of the trusts aforesaid.

That, some time in the year 1864, as these defendants are informed, the said Williamson had paid off in full all of the special liens on the property of said railroad company, authorized or provided for in
295 the orders and decrees of the court under which he took possession of said property, and particularly the special loan of $200,000, authorized to be made by him as such special trustee; and that from the time he had so paid off and discharged the same, these defendants and others standing in like condition, were entitled to have restored to them the possession of all of said railroad property and corporate rights and franchises, and are now entitled to said possession, subject only to such valid and just claims as the holders of the bonds of 1851 and 1852, yet have and hold against the same; and they further say that they are entitled to have a full accounting of all the receipts and expenditures of said road during the time the said Douw D. Williamson had and held the same, and inasmuch as there is now no board of directors, or authorized officers of said railroad company, to seek such relief, or demand such account in their behalf, they are entitled to make the demand in their own name and in their own right, and can only do so by a proper complaint in equity, in the nature of a cross-bill filed in the proceedings now pending.

Wherefore these defendants pray that they may be permitted by this honorable court to file this their cross-bill of complaint herein, against Charles E. Bill, trustee as aforesaid, and the defendant, the Louisville, New Albany and Chicago Railroad Company.

That the said Charles E. Bill be required to make full and complete answer under oath of all the matters, allegations and charges contained in this cross-bill, as fully as if the said matters, allegations, and charges were here repeated in the form of distinct interrogations.

These defendants further pray that no final decree be made upon the supplemental bill of the said Charles E. Bill, trustee, until the matters contained in this cross-bill can also be heard and determined.

That in the final decree to be made herein, the court will ascertain and determine the rights and equity of all the parties in interest, as well

those arising under the decrees of this court heretofore made, and the holders of the bonds of 1853, 1855, and 1856, as of the holders of the bonds of 1851 and 1852.

That the court will fully secure and protect by its decree all the interests of the defendants, against the unjust and inequitable demands of the said complainant Charles E. Bill, trustee, as to the bonds
296 now held by these defendants, and as to the stock held by them derived from a convertion of bonds under the decree of December 23, 1858, in such way as that the property covered by the said several mortgages, and thereby specifically pledged to secure the said bonds so converted, may be made available as such security.

That if the valid liens now outstanding against the said railroad as against these defendants as holders of the stock under the said decree, can be paid off and extinguished by the income of said railroad duly and properly applied within a reasonable time, the same for that purpose be continued under the order of this court, in the hands of the receiver, but if this cannot be done, these defendants pray that a full account be taken of all the outstanding valid liens upon the property of the said company, so as to ascertain specifically what portion thereof is applicable to each of the liens created by the said several trust-deeds, and what, if any, portion thereof is not covered by any or either of the said trust-deeds, and that the final decree of the court be so shaped as that the lien of each of said trust-deeds be decreed to apply only to the property covered thereby.

The defendants further pray that all the parties who consented to, or participated in the said proceedings in the said White common pleas court, and who are now claiming, through the said trustee, complainant, to be relieved, and to enforce the payment of the ten per cent. and eight per cent. bonds of the said railroad company that were surrendered and turned into stock of the said railroad company, be not only denied any relief at the hands of the court, but that the bonds so treated by them be decreed invalid as securities against said railroad company, and to be delivered up to this court by the said trustee to be cancelled; and to this end these defendants pray that inquiry be made in such form as the court may direct to ascertain what amount of the said ten per cent. and eight per cent. bonds have been so treated, and the name of the parties now claiming relief through the trustee complainant, who participated and consented to the said proceedings in the said State court.

And further, these defendants pray that the pretended sale of the said branch of the said railroad from Gosport to Indianapolis, be set aside, and that the said branch road be decreed to belong to the said Louisville, New Albany and Chicago Railroad Company, and to form a part of its assets, and to be so disposed of as to the court may seem just and proper.

297 And that the court may grant unto these defendants such other and further relief in the premises as may be just and equitable.

S. A. HUFF,
JAMES HUGHES,
M. M. RAY, AND
J. E. McDONALD,
Solicitors for Cross-petitioners.

The subscribers, holders of the first-mortgage bonds of the Louisville, New Albany and Chicago Railroad Company, for the promotion of their

mutual interest, agree to form an association under the following provisions:

Each subscriber to deposit with a committee of seven, hereinafter named, the bonds owned by them respectively, and receive from such committee or its officer, a certificate of one share in such association for every eight per cent. bond for $1,000 so deposited, and a certificate of one and a quarter shares for every ten per cent. bond for $1,000 so deposited.

The shares so issued to be transferable on the books of the association, to be provided by such committee on the surrender of such certificates.

The said committee shall consist of Frederick Schuchardt, Moses Taylor, James H. Banker, Edward Minturn, George F. Talman, Charles P. Leverick, and John Stewart.

The said committee shall have power to fill any vacancy in the committee, from death, resignation, or otherwise, to appoint a treasurer and an agent to advise with the trustee of said railroad, and to take all measures that may become necessary hereafter to promote and secure the interests of the shareholders; provided that no assessment on the said shares shall be made without the consent of the respective shareholders.

This association may be dissolved and their bonds returned to the several depositors, upon the request, in writing, of depositors, to the amount of three-quarters of the whole deposited.

New York, April 16, 1867.

E. L. OWEN, *U. S. Commissioner.*

APRIL 10, 1872.

Circuit court of the United States, district of Indiana.

CHARLES E. BILL, TRUSTEE, &C.,
vs.
THE LOUISVILLE, NEW ALBANY & CHICAGO R. R. Co. et al.

Gideon Putnam, one of the intervening defendants in the above-entitled cause, being duly sworn, on his oath says he is one of the
298 complainants in the cross-bill of complaint, and petition to stay proceedings on the part of the complainant, Charles E. Bill, now prepared to be filed in said court; that as to the matter set forth and charged in the said c'oss-bill, he is advised by the solicitors of the said intervening defendants they are material to be set forth herein in order that the rights of all the parties impleaded may be fairly determined and decreed. As to the charge in the said cross-bill wherein it is shown that the said complainant, Charles E. Bill, is acting under the exclusive direction and for the sole interests of the parties claiming to be holders and owners of the ten per cent. and eight per cent. bonds of the said railroad company; that he is a stockholder in the company assuming the corporate name of the Louisville, New Albany and Chicago Railway Company; that he has suffered and allowed a portion of the revenues derived from the earnings of the railroad of the defendant company to be carried out of the jurisdiction of this court since he was notified under the order of this court to cause himself to be made complainant in the above-named cause; that, since the order for the appointment of a receiver herein was made, he has permitted a large amount of such revenues to be distributed and paid out to parties claiming to be shareholders in the railway company, and has himself appro-

priated a part of such revenues as dividends belonging to him, and that both said Charles E. Bill, and those at whose instance, and for whose sole benefit, he is now seeking a foreclosure of said ten per cent. and eight per cent. mortgages, have gone on since the appointment of the receiver herein, and meddled with the funds of the company defendant, and purposely kept such funds away from the jurisdiction of this court, and withheld therefrom the hands of the receiver, and still withhold the same, are true in substance and in fact. Affiant further says that, until the cross-examination of the witnesses Geo. F. Talman, George L. Schuyler, and George P. Fitch, whose depositions-in-chief have been taken at the instance of the said Charles E. Bill, and are on file in said cause, the intervening defendants were not aware of the facts connected with the attempt to evade the jurisdiction of this court on the part of the persons who caused proceedings to be instituted and prosecuted in the State court, nor that said persons had conspired to evade the jurisdiction of said court as early as April, 1867, and with full knowledge of
299 the pendancy of this cause in this court, had secured the services of counsels during the year 1867, to avail said parties, through the trustee Williamson, of another jurisdiction, to enable them to get possession of the property and franchises of the defendant company under a claim of ownership, to the exclusion of the stockholders and others interested in the said property and franchises. That said cross-examination of said Talman, Schuyler, and Fitch was made on the 10th and 11th days of April, 1872, and the same, as well as the examination-in-chief, are now on file in this cause, and are referred to herein in support of the motion to stay further proceedings, and of the application to file the cross-bill of the said intervening defendants. Affiant further says that said cross-bill would have been filed at an earlier day but for the fact that the intervening defendants were not sufficiently acquainted with the conduct of parties who now seek a decree for the foreclosure of the ten per cent. and eight per cent. mortgages, to enable them to charge the facts truly, as they are now charged in the cross-bill prepared for filing. That these facts were in the knowledge of the said Charles E. Bill, and the parties for whom he is acting, but were never communicated to any of the said intervening defendants until they were drawn out upon cross-examination as above stated.

GIDEON PUTNAM.

Subscribed and sworn to before me this 6th day of May, A. D. 1872.
J. D. HOWLAND, *Clerk.*

Whereupon said Charles E. Bill, trustee, &c., appears to said cross-bill by Messrs. Hendricks, Hord and Hendricks, and Henry Crawford, esq., his solicitors, and he is ruled to answer said cross-bill within ten days from this date. And thereupon, on motion of counsel for said cross-complainants, process of subpœna in chancery is directed to be issued against the other said defendant to said cross-bill, to wit, the Louisville, New Albany and Chicago Railroad Company, returnable according to law.

And afterwards, to wit, at the May term of said court, on the 10th day of June, 1872, before the honorable Walter Q. Gresham, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to, wit:

Comes now Charles E. Bill, trustee, &c., by H. Crawford and Hendricks, Hord and Hendricks, his solicitors, and files his answer to

300 the cross-bill of John Savage Shaw and others, in the words following:

Circuit court of the United States, district of Indiana.

The answer of Charles E. Bill, trustee, to the cross-bill exhibited herein against him by John Savage Shaw and others.

The said Bill, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can, or may be had or taken, to the many errors, uncertainties and other imperfections in the said cross-bill of said John Savage Shaw and others, contained, for answer thereunto, or unto so much and such parts thereof, as the said Bill is advised, or are material or necessary for him to make answer unto, answering the said cross complaint, saith.

The said Bill admits the location and construction of the said line of railroad from New Albany to Michigan City, and the location and partial construction of a branch road from Gosport to Indianapolis, the execution and delivery of the several deeds of trust or mortgages in 1851, 1852, 1853, 1855, and 1856, as is aver'ed in the said cross complaint.

The said Bill further admits it to be true that his predecessor in said trust, Douw D. Williamson, on or about the 1st of October, took possession of the property of said New Albany and Salem Railroad Company, set forth in a certain deed of surrender, executed by the said corporation; that said possession was taken by the said Williamson under the decretal order herein, of June 23, 1858. This defendant is further advised, and believes it to be true, that the said Williamson never filed any account of the earnings of the said railroad with this court, but this defendant submits that the said Williamson was never required by any express order of this court to record or file any such account; that he offered to file such account in and by his supplemental bill filed in 1861, and that none of the cross-complainants or any other person interested in the affairs of said corporation at any time during the life of said Williamson, made any demand herein that he should file such report.

And the said Bill further admits that, in the year 1864, the said George F. Talman and his associates, named in said cross-bill were the actual owners of, or agents for the owners of, not only a large portion, but nearly the entire amount, of the bonds secured by the mort-

301 gages of 1851 and 1852, and they are, as is aver'ed in the said cross-complaint still the owners and representatives of all said bonds; and the said Bill is advised and believes, and therefore admits that, in the year 1864, the said Talman and other bond-creditors did demand of said Williamson that, as trustee in the said mortgages, he should remain in possession of the said railroad property, in pursuance of the terms of said mortgages, he was authorized to do in case of a default of interest.

And the said Bill, further answering, saith that he is a stranger to the matters set forth in the said cross-bill, in reference to the institution of an action in the White common pleas court of Indiana; but he is informed and believes that all and singular, the *the* allegations of the said cross-bill are untrue and false; and he denies, upon such information and belief, that the said Talman and his associates caused and procured the said Williamson to institute said action in said State court; but this defendant avers that, beyond making a demand in general terms upon the said Williamson to foreclose their said mortgages, neither the said Talman or any of his associates, at any time or in any manner, directed,

asked, or suggested to the said Williamson, or any one in his behalf, that such foreclosure proceedings should be instituted in the said State court, or any particular court whatever; and the said State court was selected solely by the attorneys and counsel for said Williamson, on their own judgment as professional men, and to promote their own convenience in the management of the cause.

The defendant admits that the said James F. Joy was appointed receiver by the White common pleas court, and took the custody of said line of railroad in 1868, and held the same until June 10, 1869; and that, personally, the said Joy has never filed with this court any report of the earnings or expenditures of said road during that period; but this defendant submits that all and singular the inquiries as to such expenditures and receipts have been included in the former decretal order of this court in November, 1870, and that the said cross-complainants are concluded and estopped by the report of the special master herein.

This defendant, on information and belief, denies the averment in said cross-bill that the said Talman and others succeeded to the possession of said railroad solely with or by the consent of said James F. Joy;

but in truth and fact, the said parties took possession under the
302 order of the said common pleas court of White County, claiming in good faith to be the purchasers thereof in manner and form as is in and by the supplemental bill herein set forth, and not otherwise.

The defendant is informed, and believes it to be true, and therefore admits that the said Talman and his associates, in October, 1868, knew of the decree which had been rendered in the cause in June and December, 1858; but, as he is advised and believes, they had no knowledge of any other proceeding or order herein from that time until 1868.

This defendant admits the death of said Williamson in the summer of 1869, and thereby the trust-estate became vested in this defendant; but this defendant denies all knowledge of the pendency of this proceeding when he executed and delivered a power of attorney on the 20th day of September, 1869, authorizing his name to be substituted as plaintiff in the proceeding in said State court.

This defendant does not know, of his own knowledge, on what precise day his counsel caused such substitution to be made, but believes it was on December 1, 1869.

This defendant admits the service of an order to substitute himself herein as complainant, which order he strictly and faithfully complied with.

This defendant denies that in any sense, except that under the said mortgages he is trustee for said Talman and other bond-creditors, is he, as averred in said cross-bill, an instrument in their hands; or that, at their procurement or otherwise, he has disaver'ed his trust under the said mortgages, or refused to recognize the jurisdiction of this court over the said trust; and this defendant says that all and singular the said allegations are false and scandalous.

And this defendant denies that the said ten per cent. and eight per cent. bonds held by the said Talman and associates, or any of said bonds, were, in the year 1869, or any other time, voluntarily surrendered and converted into the stock of any company whatever; and he further denies that the said bonds have been in any manner extinguished, but that the said bonds are still outstanding and unpaid, and constitute a valid first lien upon all the said line of railroad and its appurtenances, as is in and by the supplemental bill set forth.

And as to the express charge made in said cross-complaint as to

the bringing of said action in said State court, and the fraudulent conspiracy to evade the jurisdiction of this court, this defendant
303 answering, saith that, as he is advised and believes, it is wholly untrue; and he therefore denies that the said proceeding in said State court was commenced or prosecuted in that court at the procurement of said Talman and others; and, upon like information and belief, he denies that such proceeding was the result of any conspiracy whatever, and this defendant denies that there was any conspiracy whatever between said Williamson, Talman, and his associates, or any of them, in the manner and form as set forth in said cross-complaint contained, or in any other manner to evade the jurisdiction of this court, or to evade the force and effect of the decrees and decretal orders in this cause, or any of them, or to enable the said parties to cheat and defraud the said cross-complainants, or any other person or persons, out of their rights as stockholders or their rights under said decrees; and this defendant denies that the said Williamson was an instrument in the hands of said Talman to accomplish any such purpose.

This defendant submits to the court for its own judgment thereon the provisions of the decree enrolled in the said White common pleas court; and, while admitting the fact that said decree provided for the payment of the principal and interest of the ten per cent. and eight per cent. bonds, in full before any others, he expressly denies that said provision was entered in pursuance of any fraudulent design, or that it is unlawful or inequitable in any part; but, on the contrary thereof, he insists that, by the terms of said mortgages, and by the terms of the decrees of this court the said mortgage-bonds of 1851 and 1852 constituted the first and paramount lien on the entire road and its appurtenances and franchises and income, and in law and equity are entitled to be paid in full before any other liens or incumbrances; and this defendant denies that the said decree was, in any portion thereof, framed for the fraudulent purpose of enabling the said Talman and others to control the said railroad property, or destroy the rights or property of said cross-complainants, or any of them. And the defendant further denies that any interest on the ten per cent. or eight per cent. bonds which had been canceled by the decree of this court was in any manner included in said decree in said State court, and each and every of such allegations are, in substance and spirit, utterly false, and without any foundation whatever in fact.

304 And this defendant shows to the court that it is in no way in the said cross-complaint set forth as claimed, that, at the institution of the proceedings in said State court, the bonds and coupons held by the said Talman and others were not just, valid, and outstanding liabilities of the said corporation, as that the said corporation or any one in its behalf had paid or discharged the same, or that the security was adequate, or that the said Talman and his associates did not have the right in same court having competent jurisdiction to recover judgment for the entire amount of their said bonds and procure the sale of all the said line of railroad and its appurtenances, to realize the entire amount of such demands, before any dividend or payment of any kind to the said cross-complainants or any of them; and thereupon, denying any and all charges of fraud or unfair dealing on the part of said Talman and his associates, this defendant answers further as to the said charges of a fraudulent conspiracy to defraud the said cross-complainants out of their rights of property in the said corporation, this defendant saith: That it appears in and by the said mortgages and the decrees of this court, that none of the said cross-complainants have any

rights of property in said railroad, except after the full payment of principal and interest of the bonds of 1851 and 1852; that it appears by the report of the special master, and that the fact was such, that in the year 1868 the said corporation was largely in arrears for interest, and was hopelessly embarrassed and insolvent; that in 1868 the said road was not worth to exceed $2,000,000 including all its equipment and property of every description, and that at that time the road would not bring at public sale any greater sum.

And this defendant further shows that at the time when the said cross-complainants charge the said Talman and associates made a fraudulent conspiracy to cheat said cross-complainants, that from the year 1858 to 1868, the said railroad company did not pay but two years' interest on the bonds of 1851 and 1852, and that the sum of about five million dollars was then due on the said bonds, counting principal and interest; and that said bonds were only worth about fifty cents on the dollar.

And this defendant, further answering, denies, on information and belief, that the said Schuyler or Joy became bondholders until
305 some time after the institution of said proceeding in said White common pleas court, and he denies that they became such holders except in good faith and for value, and without any purpose to aid or in fact aiding any fraudulent conspiracy whatever; and this defendant is now and for several years has been a holder of said bonds to the amount of five thousand dollars, acquired in good faith and for value.

And this defendant denies that, in the month of April, 1867, or at any other time did the said Talman and others enter into such conspiracy or did any of them, and he denies that the said parties, in their own right or as agents, surrendered any of said bonds of 1851 and 1852, in the organization of the so-called railway company, in any manner whatever, and he denies that the said Talman and his associates were engaged in any conspiracy whatever, or that the said bonds of 1851 and 1852 or any of them were cancelled or converted into the stock of the railway company on any terms or in any manner whatever, whether in accordance with such pretended exhibit or otherwise.

This defendant admits that, out of the net earnings of the said railroad, $180,000 was divided among the persons who considered themselves and were shareholders therein; but this defendant shows to the court that all and singular, such persons are the holders of the said ten per cent. and eight per cent. bonds; and, since the order and decree of this court declaring that the White common pleas court had no jurisdiction, and the abandonment of their appeal from that decree, the said bond-creditors have taken the said sum of $180,000 into account as a just credit on their said bonds, and the said sum is set forth in the said supplemental bill as being a payment to that extent on said bonds, and was so credited on said bonds by the special master without any objection or exception from the said cross-complainants; and this defendant further shows that he held $5,000 worth of the stock of said Railway company from its organization, on account of his being such bond-creditor as aforesaid; and that, without intending any contempt of this court or to disregard his trusts in the premises, he received, while the question as to the validity of said foreclosure proceedings were being discussed and unsettled in the courts, his proportionate share of the $180,000 being the sum of $300.

This defendant, further answering, saith that no bond-creditor other than those of 1851 and 1852, have ever, at any time, made any
306 request on him to file a supplemental bill to foreclose any of the

said liens on said road and this defendant submits to the court that, as trustee in this cause, he has no authority to proceed to a foreclosure of any of the mortgages which have been decreed to be cancelled by this court, and to which decree the said cross-complainants have made themselves parties; but as to any and all such equities as the said cross-complainants may have in the said premises, after the satisfaction of the elder liens provided for by the said decree, this defendant submits them to the court for its judgment and determination.

This defendant has no knowledge, information, or belief as to the ownership of any bonds of the said corporation, or stock owned by said cross-complainants, or any of them, but is a stranger to all such matter, and does not admit the same.

This defendant denies the allegations and conclusions in the said cross-bill set forth with regard to the true intent and meaning of the mortgages executed by the said corporation, and he submits the said mortgages of 1851 and 1852 unto the court, claiming in behalf of said bond-creditors secured thereby, and whose rights were fixed by the said decree of December, 1858, that they constitute the first and paramount lien on all the property of said corporation of every description, whether in existence at the dates of the instruments, or thereafter acquired, and all of the income of the road; that the bonds secured thereunder are in full force, and that in and by the express terms of the said decree of December, 1858, herein, the said cross-complainants are each and every of them estopped and concluded from asserting that such liens are not upon all and singular the entire property and its income; and this defendant claims and insists that the said cross-complainants are not entitled to the proceeds of sale of any portion of said property until the said bonds of 1851 and 1852 are fully discharged and paid; and while this defendant admits to be true, on information and belief, that portions of the rails and superstructure on the said line of railroad, and portions of the machinery have been acquired by purchase since the date specified in the mortgages of 1851 and 1852, he submits as matter of law that such after-acquired property is fully embraced in and covered by the said mortgages of 1851 and 1852, and that the claim of said cross-complainants and every of them are later in time and inferior in equity to the just lien of this defendant as trustee for said mortgages of 1851 and 1852, and that the allegations in the said cross-complaint
307 in that regard are not sufficient to establish any equity in favor of the said cross-complainants and against this defendant.

And as to the averments in the said cross-complaint as to the amount of work done at different times, and the particular portion of property rails, engines, ties, cars or equipments now in existence which were in existence when any of said mortgages were delivered, or as to whether any portion of the said property was purchased with the said bonds of 1851 and 1852, or the money derived therefrom, or by any other of said bonds of junior date, or the money derived threfrom this defendant has no knowledge or information, and neither admits or denies the same, but submits the construction of the said conveyances to the court.

This defendant has no personal knowledge or information concerning the matter set forth in said cross-bill touching the Gosport branch, but all his information is derived from the records of this court. During the life-time of his predecessor, who made application, as this defendant is advised, for authority to make sale of said Gosport branch, and did, thereupon, in pursuance of the order of court, sell the same, and reported his action to the court, and the purchase-money therefor, which came into his hands, was duly debited to him, and is included and ad-

justed in the said Williamson's accounts by the special master, as will fully appear by his report on the files herein, and this respondant submits that all of the said matters are not within the scope of his supplemental bill, and that he has no knowledge thereof, and is ready to do and perform all such acts as the court may direct him to do in connection with that matter. And as to the many charges and insinuations in the said cross-complaint contained as to the fraudulent conspiracy on the part of said Talman and others in said cross-bill specified, and as to the action in said court having been brought in pursuance of any such conspiracy, or in some way to defraud said cross-complainants, or any of them out of their just rights or property in said line of railroad, or to defeat the jurisdiction of this court, or in any manner to defeat the trusts or equities set forth in the said decrees of June and December, 1858, this respondent insists that the same are vague, indefinite, and uncertain, and fail wholly to set forth the particulars of any such conspiracy or alleged fraud, but consists wholly of the assertion of fraudulent motives on the part of said Talman and others in the performance of certain acts which this respondent claims were each and every one of
308 them fair, open and equitable; and thereupon this respondent shows to the court that, from the year 1859 to the present time, there has been a continuous default in the payment of interest on the said mortgage-bonds of 1851 and 1852, and that in the year 1868, the said railroad company was hopelessly insolvent; that the whole line of railroad and appurtenances was not at said time worth to exceed two million dollars, and would not have brought that sum at public auction under a decree of foreclosure and sale; that the past-due interest by way of unpaid coupons on the said bonds of 1851 and 1852, in September 1868, was fully two million of dollars; that the revenues of the said railroad were at that time barely sufficient, with the practice of the greatest economy, to discharge the operating expenses, and left no surplus to be applied to the large accrued sum of interest, or to the current coupon obligations of said bonds of 1851 and 1852, and there was no prospect or probability at that time that the said bond-creditors, secured by the mortgages of 1851 and 1852, would ever be able to realize even one-half of the amount of principal of their said bonds and the interest thereupon; and besides owning and representing nearly all of said bonded obligations, the said Talman and his associates held and represented nearly the entire common stock of the said railroad company, save and except those shares which may be held by the said John Savage Shaw and his associates.

Under such circumstances, in the month of August or September, 1868, the said bond-creditors aforesaid made a demand upon the said Williamson, as such mortgage-trustee, to institute proceedings to foreclose the said mortgages and sell the said property, and this respondent denies each and every allegation of the said cross-bill which expressly or impliedly asserts that the said demand was made in furtherance of any fraudulent conspiracy to defraud this court of jurisdiction, or cheat the said cross-complainants, or any of them, in any manner whatever; but this respondent insists that the said demand was in every way a regular and lawful one, which the said bond-creditors had a right to make, and was made solely for the purpose of realizing some portion of an undisputed honest debt by the sale of their debtor's property, according to law and in the course of regular judicial proceedings; and this respondent denies that said demand was so made with the intent, desire, or expectation of defrauding any of the cross-complainants;
309 but on the contrary those of the said bond-creditors never ex-

pected to realize by such judicial proceedings one-half the amount of their first lien upon the property, and would have been willing that any other person should have bid in said property at such sale on a bid of even two million dollars.

And this respondent shows further to the court that the reason why such foreclosure proceedings were instituted in the State court, and not in this court, is in and by his supplemental bill fully and at length set forth, and he repeats the said averments and prays the benefits of such averments, as though the same were incorporated in his answer. And this respondent denies that in any manner whatever the said Talman or any of his associates, or the said Williamson, had anything whatever to do with the selection of the particular court in which the said action was brought, but the said forum was selected and the action brought therein, wholly on the selection of the counsel employed, relying on their own legal judgment and to promote their own convenience, and in no manner and with no intent or desire to defraud this court of any jurisdiction, or in any way defraud the said cross-complainants or any of them.

And this respondent shows to the court that, on the application of the said cross-complainants, it has been herein ruled and adjudged that the said White common pleas court had no jurisdiction to entertain said cause, and that its decree and all proceedings thereunder were and are wholly null, void, and of no effect whatever; and so your respondent claims and insists that such void proceedings constitute no estoppel, and have not in any manner varied, extinguished, or satisfied the rights, priorities, and equities of this respondent and his cestui que trusts; that the institution of a proceeding in good faith under the advice of counsel to collect an admitted debt, but in a court without any jurisdiction whatever does not in equity and good conscience bar or preclude any of the rights or liens of the bond-creditors, who, under a mistake of law as to the jurisdiction of said State court, undertook to collect their claim therein.

And this respondent denies that the said cross complainants are entitled in any manner to the possession of the said line of road or any of its equipment or property, or to any rights or equity therein until the full payment of the entire principal and interest due upon the said ten per cent. and eight per cent. bonds, which now amounts to about
310 six million dollars. And this respondent doth claim and insist that by reason of all and every matter in the said cross-bill contained, the said cross-complainants are not entitled to any relief in equity, and this respondent prays the same benefit of this defense as if he had demurred thereto.

And this respondent denies all and all manner of unlawful combination and confed'racy wherewith he and the said Talman and others are charged by the said cross-bill, without this, that there is any other matter, cause, or thing in the said cross-complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matter and things this respondent is ready and willing to aver, maintain, and prove as this honorable court may direct; and having fully answered the said cross bill, he prays to be dismissed thereas with his costs and charges in that behalf most wrongfully sustained.

CHA'S E. BILL,

United States , *Southern District of New York.*

they say that Judge Huff, having attended the examinations before the said master, was relied upon by these petitioners and their other counsel to examine said report and except to the same, if it should prove to be liable to exceptions; and that said report is liable to exception these petitioners now bring to the attention of this honorable court the matters of exceptions specifically pointed out in the pages hereto appended.

Wherefore these petitioners ask relief in this, to wit:

First. That they may be allowed now to file their exceptions to the said master's report, for the causes and reasons aforesaid; or,

Second. That the court will, upon the suggestions of this petition, and the exceptions thereto attached, and for the causes contained in each, remand and refer the said report back to the said master, with fit and proper instructions in regard thereto, to the end that the same may be made to conform to the requirements of the orders of this court, and that this latter may be done under the discretionary powers of a court of chancery in cases of imperfect reports made and returned by masters in chancery.

JOHN SAVAGE SHAW ET AL.,
By HUGHES, McDONALD, HUFF & RAY,
Attorneys for Petitioners.

CHARLES E. BILL, TRUSTEE, ETC.,
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company.

In the United States circuit court.

Exceptions taken by the intervening defendants, John Savage Shaw, Laura H. Shaw, Laura W. Shaw, Frank E. Shaw, Gideon Shaw, Hellen Shaw, James E. Emerson, (administrator of Charles N. Emerson, deceased,) Augustus J. Emerson, (administrator of Edward B. Emerson, deceased,) Blanche V. Babcock and Myron H. Babcock, her husband, Gideon Putnam and Stella C. Putnam, his wife, Henry W. Shaw, and Avery V. Williams, admitted by the court to defend herein; also,
314 as complainants in a cross-bill, filed by leave of the court, against the complainant, Charles E. Bill, trustee, &c., do, by their attorneys, Hughes, Huff, McDonald and Ray, take exceptions to the report of Simeon K. Wolfe, esq., a special master heretofore appointed by this court, under special and peremptory instructions by the order and decree of this court, a copy whereof is herewith filed and made part of this exception, for facility of reference, and marked Exhibit A. And for that said report is not a report of the master's conclusions and findings, but only a report of the evidence on certain points, and an excuse for not reporting the evidence on others.

EXCEPTION No. 1.

For that the said master's report is wholly insufficient and defective in this, to wit: For impertinently admitting and reporting to this court without justification under the authority of his appointment, and without the consent of these intervening defendants or their attorneys, the following improper matter, at the instigation of Henry Crawford, one of the complainant's counsel, and found on page six of said master's report, viz: "Which sum, by the written admission of H. Crawford, solicitor

for trustee and bondholders, on file with the evidence herein, is subject to the following credits: For money paid out during the railway company to the bond-creditors, $180,000; for money paid on request of bondholders on account of Michigan City Harbor Company, $29,700." Because they say the said item of $180,000 is the same item and money mentioned in the defendant's answer and cross-bill as so much of the earnings of the Louisville, New Albany and Chicago Railroad Company, but seized upon and misappropriated by the stockholders of the Louisville, New Albany and Chicago Railway Company, so-called, and appropriated under circumstances which, according to the pleadings and evidence in this cause, forbid the attorney, Crawford, from interpolating into said master's report any such statement as the attorney for Bill, an admission as the attorney for the bondholders, in order to relieve the latter of the consequences in part of a stupendous fraud, and should be stricken from said report by order of the court. And because said $180,000 constitutes part of the assets of said company.

EXCEPTION No. 2.

For that said master's report is further defective and insufficient
315 in this, to wit: Said report, in response to No. 6 of the subdivision of the matter thereof, on page No. 9 of said report, omits any report whatever. For that under the order of this court the said master was instructed and required to ascertain and report to this court, among other things, the amount of all other liabilities of said company, and the nature thereof. And the said master has reported on the same in the following language, and in no other way, or to any other extent, whatever, viz: "No proof or evidence of any other liabilities of said company has been produced before me." For that it was the master's duty under said order to seek the evidence from proper sources, and report the same to this court as important information touching the administration of an unsettled trust of fifteen years' standing, and touching the final disposition the cause now pending, and of the railroad and its assets now in hands of this court. Wherefore, said report should be referred back to said master for a more full and reliable response thereto, and because it was in evidence before said master that said $180,000 is part of the assets of said company.

EXCEPTION No. 3.

For that the report of said master is also defective in this, to wit:

The order made by this court for the rule and guide of said master in the discharge of his duties required said master to report, among other things, to ascertain and report the amount of the entire assets of company, including its road and all its other property.

The only report which said master makes thereon is made under the subdivision of the matter of said report, on page No. 9 thereof, and subdivision No. 7 thereof, and in these words, viz:

"There was no evidence produced before me directed specially to said matter. The deeds of surrender to Williamson, already referred to, show the property which came into his hands at their respective dates; and the schedule referred to in the evidence of W'm N. Mahon show property belonging to said company; but for the want of sufficient evidence I am unable to report the amount of the entire assets of the said company." For that said failure to so report is not excused by the fact that "no evidence was produced before said master directed specially

to said matter, because such facts relate in an important sense to the proper action of this court in the final orders and decrees that
316 may be made for the disposition of all the assets of said railroad company; and for that a reference to the deeds of surrender to said Williamson, made fifteen years ago for a temporary purpose, and held by him for ten years, would shed no light on the amount and value of such property when it was returned to the hands of this court; nor of the amount and value of the same at the date of said report; and for such insufficiency the said report should be referred back to the said master to be made full and complete by an inventory or schedule, and its probable value, in order that this court may know the extent of the fund now being managed, and be disposed of for those entitled to share therein; and in order that this court know whether any part thereof has been converted, lost, or squandered during the twelve years that the same was in the hands of said Williamson and Joy as receiver and trustee; or whether anything has been added thereto of great value; and, if so, by whom, and whether since the same was taken out of their hands by this court.

EXCEPTION No. 4.

For that said master's report is insufficient and defective in this, to wit:

The said order of this court required said master to report, among other things, "The amount of the property covered by each of the mortgages executed by the company to secure the said several series of bonds." But the said master contents himself with the statement that "no evidence was introduced from which I am enabled to report as to the existence or the non-existence, condition, amount, or value of said mortgaged property, at the present time;" with the further statement that "by the verbal agreement of counsel, the property covered by the mortgages is correctly described in the printed record of the White County suit." This deficiency, thus pointed out and excepted to hereby, is the subdivision of the subject-matter of said report No. 8, on pages 9 and 10 of said report, and for which cause said report should be referred back to said master to improve and complete the same; because said report should explicitly show, as nearly as it is practicable to ascertain, by sending for persons and papers, which he was by the orders of this court authorized to do, what property the railroad company owned, when the mortgage was given to secure the ten per cent. bonds on that part of the road lying between New Albany and Gosport,
317 and what machinery was purchased, if any, with the proceeds of the $500,000 ten per cent. bonds secured by said mortgage, in order that it may be known which property of said road, under the specific limitation of said mortgages, was covered by the first and what by the second mortgage, which covered, subject to the first mortgage, all the property owned by said company between New Albany and Gosport, and all the property owned by said company between Gosport and Michigan City, and such machinery as might be acquired by said company after that date, with the proceeds of the sale of the said eight per cent. bonds.

For that it was also necessary to the adjustment of the rights of second and third mortgagees, who did not surrender their bonds, with the proceeds whereof nearly all the machinery now in use may have been purchased; and also in adjusting the rights of the stockholders of said railroad company, and especially the rights of these intervening

defendants and those standing in like relation, who either own the second or third mortgage bonds, with the proceeds of which the machinery and rolling-stock now owned by said company in great part was purchased, according to the averment of their answer and cross-bill.

EXCEPTION No. 5.

For that said master's report is defective and insufficient in this, to wit: The evidence taken before said master and returned by him as part of his report, clearly shows that the so-called Louisville, New Albany and Chicago Railway Company caused to be surrendered the said bonds which are named in the testimony of E. J. Brooks, and the five letters of W. H. Lewis, produced and identified by said Brooks, for stock in the so-called Louisville, New Albany & Chicago Railway Company. It is also shown and proved by the same evidence that the bondholders, whom the plaintiff Bill represents in this suit, had surrendered their said bonds for which said Bill is seeking to foreclose said mortgages at and upon the sale of the said Louisville, New Albany and Chicago Railroad Company, by virtue of the proceedings in White County, Indiana, in the defendant's answer fully set forth; yet the defendant except for that the said master's report makes no mention thereof, nor does his report contain any conclusion or inference from such evidence; and so the report of said master is defective and deficient in that respect, and ought to be remanded and referred back to the said master to be completed and perfected in that regard.

318 EXCEPTION No. 6.

For that the said report is insufficient and defective in this, to wit: It appears by an affidavit made by Henry Crawford, esq., and made part of the *of given by these* defendants and reported by the said Wolfe as part of the evidence given before him, that the said Douw D. Williamson, trustee as aforesaid, after the year 1864, at the request of the bondholders, retained possession of the said railroad under the conditions and terms set out in such mortgages; and that said Williamson neither had or claimed possession of the said road since the year 1864 under the decree of this court of June 23, 1858, but only under the mortgages of said company.

For that with this evidence before the said commissioner, he wholly fails to report what amount of the revenues or earnings of said road was at any time paid by said Williamson to said bondholders on the interest or principal due on said bonds, but reports the amount due by calculating principal and interest on the face of said bonds, without regard to any proper credits thereon; whereas no foreclosure can properly be had against said defendants without a full accounting on the part of said Bill and said bondholders as mortgagees in possession. For which reason they say that said report should be referred back to the master to be completed.

HUGHES, McDONALD, HUFF & RAY,
Attorneys for Defendants.

And such filing is only permitted, subject to the right of the complainant to object that such exceptions come too late.

And it is ordered by the court that the sum of $1,200 be allowed to

said Wolfe in full for his services and expenses as such master; and that the sum of $450 *dollars* be allowed Mahon for his services as clerk to said master; and it is further ordered that the receiver do pay the same.

And afterward, to wit, at the May term of said court, on the 8th day of July, 1872, before the Hon. Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now George H. Chapman, esq., receiver herein, and files his report for the month of May, 1872, in the words and figures following:

And at the same time also files his report for the month of June, 1872, in the words and figures following:

319 And at the same time also files his third (3d) term report, from January 1, 1872, to June 30, 1872, in the words and figures following, to wit:

George H. Chapman, receiver of the rights, franchises, property, and credits of the Louisville, New Albany and Chicago Railroad Company in the above-entitled cause, upon his oath says that the annexed Exhibit A contains a full, true, and complete statement of his receipts and disbursements from the first day of January, 1872, to the 30th day of June, 1872, both inclusive.

GEO. H. CHAPMAN, *Receiver.*

Receipts and disbursements of cash made by George H. Chapman, receiver of the Louisville, New Albany and Chicago Railroad Company, from January 1, 1872, *to June* 30, 1872, *inclusive:*

Balance in general fund from December, 1871, account	$62,016 54	
Balance in special fund from December, 1871, account	2,798 50	
		$64,815 04

RECEIPTS.

From freights	$267,292 00	
From passengers	137,182 96	
From mail	14,400 00	
From express	7,411 41	
From telegraph	1,368 68	
From miscellaneous	3,586 12	
		431,241 17

DISBURSEMENTS.

For office and station expenses	3,238 43
For train expenses	974 52
For wood	46,615 50
For preparing wood	21 30
For oil, waste, and tallow	3,583 83
For repairs of engines	13,890 17
For repairs of cars	43,320 94
For repairs of buildings	2,933 68
For repairs of bridges	710 77
For repairs of roadway	5,828 29

	For new iron	12,496 37	
320	For telegraph expenses	320 36	
	For stationery and printing	2,907 57	
	For legal expenses	2,049 95	
	For personal injuries	181 25	
	For injuries to animals	2,993 37	
	For damage and loss on freight	1,539 60	
	For earnings refunded	709 93	
	For taxes, rent, and insurance	7,775 34	
	For machine-shop expenses	647 11	
	For engine and car mileage	7,610 19	
	For interest, discount, and exchange	9 15	
	For freights to railroads	37,597 72	
	For passage-money to railroads	16,400 43	
	For liabilities to operatives	256,496 31	
	For ties	10,245 12	
		$481,102 20	
	Paid to Geo. H. Chapman, as receiver	2,000 00	
			483,102 20
	Balance carried forward		$12,954 01

And thereupon, on motion, it is ordered that said last-named report be refer'ed to J. D. Howland, master in chancery, who is instructed to take the proofs therein, and report his findings to this court with all convenient speed.

And afterwards, to wit, in vacation of said court, on the 7th day of October, 1872, before the honorable Walter Q. Gresham, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now J. D. Howland, master in chancery, and files his report and evidence on the 3d term report of the receiver herein, in the words and figures following:

321 And afterwards, to wit, at the November term of said court, on the 7th day of November, 1872, before the honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

And at the same time also comes Henry Crawford, esq., of counsel for the complainant, and files his motion in writing to suppress the deposition of Hiram Chase, which motion is in the words following:

The complainant moves the court to suppress and strike from the record the paper-writing filed September 9, 1872, purporting to be the deposition of Hiram W. Chase, taken before W. C. Wilson, U. S. commissioner, and for cause assigns—

That the said deposition was taken contrary to law.

That the deposition is not taken or certified according to the acts of Congress.

That the said deposition was not taken and filed within the time required by the order of this court at the last term.

H. CRAWFORD.
HENDRICKS, HORD & HENDRICKS,
Solicitors.

322 And afterwards, to wit, at the November term of said court, on the 13th day of November, 1872, before the honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Henry Crawford, esq., of counsel for the complainant, and moves the court to strike out the exceptions to Master Woelff's report herein, and at the same time files his affidavit in support of said motion, in the words following:

And afterwards, to wit, at the November term of said court, on the 19th day of November, 1872, before the honorable Thomas Drummond and the honorable Walter Q. Gresham, judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties by their respective solicitors, and argument having been heard, the court doth now sustain the motion of Mr. Crawford to strike from the files the exceptions to Master Wolf's report; and

H. Crawford, esq., of counsel for the complainant, now moves the
323 court to set the cause down for argument on to-morrow morning; and the court being sufficiently advised, doth now sustain the motion of Mr. Crawford to suppress the depositions of H. W. Chase herein; to which ruling, in suppressing said depositions, the defendants now except.

And afterwards, to wit, at the November term of said court, on the 20th day of November, 1872, before the honorable Thomas Drummond and the honorable Walter Q. Gresham, judges as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by their respective solicitors, and the defendants now move the court, in writing, and on affidavit filed, to vacate the order setting down this cause for hearing; and argument being heard, the court overrules the same; and at the same time no objection being made, it is ordered that the report of the master upon the 3d term report and vouchers of the receiver, be and the same is approved.

And said affidavit is in the words following:

324 GIDEON PUTNAM, being duly sworn, on oath, says he is informed, and believes it to be true, that one William S. Culbertson, who resides in the county of Floyd, and State of Indiana, and within said district, was, at the last election of directors, held by the stockholders of the said Louisville, New Albany & Chicago Railroad Company, elected one of such directors; that, since said election, the said company has held no election for directors of said company, and that the said Culbertson still is one of the directors of said company, as affiant verily believes.

GIDEON PUTNAM.

Subscribed and sworn to before me this 20th day of November, A. D. 1872.

FRANK L. BIXBY, [SEAL.]
Notary Public.

And afterwards, to wit, at the November term of said court, on the 21st day of November, 1872, before the honorable Thomas Drummond and the honorable Walter Q. Gresham, judges as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Now, on this 21st day of November, 1872, this cause came on
325 for final hearing on the amended supplemental bill of complaint filed herein on the 2d day of June, 1871, and the answer of the intervening defendants, John Savage Shaw and others, filed on September 4, 1871, the replication thereto, the default of the said railroad company, the report of the special master, filed March 25, 1872, and the depositions and evidence adduced, and at the same time the cross-bill of said John Savage Shaw and others, filed June 1, 1872, came on

for final hearing upon the said cross-bill, the answer of the said complainant, Charles E. Bill, thereto, the replication and proofs adduced; and the court having heard counsel thereupon, and being sufficiently advised in the premises, do now finally order, adjudge, and decree that the said cross-bill of said John Savage Shaw and others, filed on June 1, 1872, be, and the same is hereby, dismissed, absolutely, for want of equity, and that the complainant recover costs.

And it is further adjudged and decreed that, upon the said amended supplemental bill, the equity of the cause is with the complain-
326 ant; that the material allegations therein contained are true; and that by reason of such matters the said complainant, Charles E. Bill, is entitled to the relief prayed at the foot thereof.

And the court finds and decrees from the evidence in the case, and the report of the special master, that there is now outstanding and due to the different holders of the ten per cent. bonds of the said railroad company, issued under the trust-mortgage, dated February 8, 1851, the sum of one million one hundred and ninety-six thousand eight hundred and sixty-eight dollars, ($1,196,868.00,) and that the said bonds, by virtue of the said mortgage, constitute a first and paramount lien on the property described therein.

And the court further finds and decrees that there is now outstanding and due to the different holders of the eight per cent. bonds of the said railroad company, issued under the trust-deed dated February 14, 1852, the sum of four million nine hundred and thirty-two thousand three hundred dollars, (4,932,300,) and that said bonds, by virtue of the said trust-mortgage, constitute a first and paramount lien on the
327 property therein described, subject only to the lien and priority of the mortgage of February 8, 1851, as aforesaid.

And the court further finds that the said several sums aforesaid are justly due and unpaid from the said Louisville, New Albany and Chicago Railroad Company to such different bond-creditors, that the said corporation is insolvent, and that it has no assets other than the property specifically described in the said two trust-mortgages, which mortgaged property is not sufficient to pay the debts charged upon it by such mortgages; and that in consequence of such default the said mortgages should be foreclosed, and the property sold to realize the said debts; and the court further finds that all the said sums so secured by the said two mortgages, and by the terms of said bonds and mortgages, due and payable without relief from valuation or appraisement laws.

For the purpose, therefore, of finally closing the trusts embraced in the said two mortgages, and securing the application of the proceeds
328 of all and singular the mortgaged property to the satisfaction and payment of the just debts of the said bond-creditors as they are hereinbefore found and adjudged:

It is ordered and decreed that the said two mortgages be foreclosed, and that all and singular the line of railroad running from New Albany, in the county of Floyd, through the counties of Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, and La Porte, to Michigan City, and being of the length of two hundred and eighty-eight miles or thereabouts; that is to say, the said railroad as at present constructed and operated, including the right of way and land occupied thereby, together with the superstructure and tracks thereon, engines, tenders, cars, tools, materials, equipments, machinery, furniture, and all other real and personal property appurtenant to the said line of railroad, together with the tolls, income, and revenues levied therefrom, and the franchises to

maintain and operate the same, be sold as an entirety, and without any relief from valuation or appraisement laws, at public auc-
329 tion to the highest bidder, at the court-house door in the city of New Albany, Indiana, where the principal office of the said company is situate, upon such notice by advertisement in some newspaper of general circulation, published at New Albany, and at Indianapolis, Indiana, for the length of time required by the laws of Indiana and the rules of this court in case of the sale of ordinary real estate on execution; and upon such sale it is ordered that the equity of redemption of the said Louisville, New Albany and Chicago Railroad Company, and all claiming under it, and of the said intervening defendants in and to the said property hereby directed to be sold, and each and every part thereof, be forever barred and foreclosed.

And it is further ordered that John D. Howland, esq., be, and he is hereby, appointed special commissioner, and invested with full power and authority to execute this decree by the sale and conveyance of the said railroad property, appurtenances, franchises, as herein provided.

And he is directed and required, upon receiving a certified
330 copy of this decree, to proceed to execute the same with all reasonable speed, by giving the notice and making the sale of said property on the terms and in the manner herein specified.

On the sale of said property the terms shall be cash in hand on the day of such sale, unless the property is bought in by the holders of said eight and ten per cent. bonds, or the agent or attorney of such bond-creditors, in which case the said special commissioner shall be authorized and required to receive in pro-rata payment of such bid and purchase-money, (except as to all costs and expenses of sale justly charg'able against the said proceeds of sale, all which costs and expenses must, in case of any bid, be paid in cash,) the surrender and delivery to him of the said ten per cent. and eight per cent. mortgage-bonds, to be credited on such bid in the following proportions; that is to say: Each ten per cent. bond and accompanying coupons to be entitled to its proper proportion of one hundred and thirteen two hundred and eighty-eight's ($\frac{113}{288}$) of the amount of said purchase-money,
331 after deducting the costs and expenses of sale, each eight per cent. bond and accompanying coupons to be entitled to its proper proportion of one hundred and seventy-five two hundred and eighty-eight's ($\frac{175}{288}$) of the amount of such purchase-money, after deducting costs and expenses of sale; and on the payment of such bid at such sale, either in cash or in bonds, in compliance with the terms of this decree, it is ordered that the said special commissioner do make, execute, acknowledge, and deliver to the purchaser at such sale, a good and sufficient conveyance, vesting in the said purchaser or purchasers in fee-simple, absolute, all and singular the said line of railroad, appurtenances, equipment, and franchises, which are directed to be sold hereby. And on the delivery of the said deed of conveyance to the said purchaser or purchasers at such sale, he or they shall forthwith be let into the quiet and exclusive possession and enjoyment of all and singular the said property so purchased by them.

And the said special commissioner is directed to report to the
332 court his doings in the premises, and to pay into court, after deducting the expenses of sale, all the moneys and bonds which may have been received by him upon such sale.

And it is further ordered and directed that the complainant do have and recover of the intervening and answering defendants, John Savage Shaw and others, the costs of this action growing out of and after the

issues tendered by the said answers, the said costs to be taxed by the clerk.

And the defendant intervenors herein pray an appeal to the Supreme Court, which is allowed, (without supersedeas,) on their entering into bond according to law, with security to be approved by the court in the penal sum of two thousand dollars.

And afterwards, to wit, during recess of said court, on the 10th day of January, 1873, the following further proceedings in the above-entitled cause were had, to wit:

Come now the said appellants and file their bond for an appeal herein, as prayed by them, in the words following:

333 Circuit court of the United States for the district of Indiana.

JOHN S. SHAW, GIDEON PUTNAM, STELLA C. Putnam, Laura W. Shaw, Laura H. Shaw, Frank E. Shaw, Gideon Shaw, Helen Shaw, James E. Emerson, (administrator of Charles N. Emerson, dec'd,) Augusta J. Emerson, (adm'x of Edward B. Emerson, dec'd,) Blanche V. Babcock and Myron H. Babcock, her husband, Henry W. Shaw, & Avery D. Williams,
vs.
CHARLES E. BILL, TRUSTEE, &C. } Appeal.

Know all men by these presents that we, Gideon Putnam, Samuel A. Huff, William H. Edwards, George W. Farly, John Rileg, are held and firmly bound unto the said Charles E. Bill, trustee, in the sum of two thousand dollars, to be paid to the said Charles E. Bill, trustee, his executors, administrators, or assigns, or successor; to which, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this day of , 1872.

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Whereas the above-named Gideon Putnam, John S. Shaw, Stella C. Putnam, Laura W. Shaw, Laura H. Shaw, Frank E. Shaw, Gideon Shaw, Helen Shaw, James E. Emmerson, (adm'r,) Augusta J. Emmerson, (adm'x,) Blanch V. Babcock, Myron H. Babcock, her husband, Henry W. Shaw, and Avery V. Williams, have prosecuted an appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their said appeal to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

GIDEON PUTNAM. [L. S.]
SAMUEL A. HUFF. [L. S.]
WILLIAM H. EDWARDS. [L. S.]
GEORGE W. FRIEDLEY. [L. S.]
JOHN RILEG. [L. S.]

Sealed and delivered in the presence of—
FRANK L. BIXBY.

(And said bond is endorsed:) "Approved. W. Q. Gresham, judge."

Here follow the depositions on file in this cause:

Depositions of George F. Talman, George L. Schuyler, and George P. Fitch. Filed November 6, 1871.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this 27th day of October, in the year of our Lord one thousand eight hundred and seventy-one, I, Edward
335 L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at the office of the Farmers' Loan and Trust Company, 26 Exchange Place, in the city of New York, in the said southern district of New York, in the State aforesaid, George P. Fitch, to testify, and the truth to say, on the part and behalf of the complainant, in a certain suit or matter of controversy now pending and undetermined in the circuit court of the United States for the district of Indiana, at Indianapolis, wherein Charles E. Bill is complainant, against the Louisville, New Albany and Chicago Railroad Company and others.

And thereupon the said GEORGE P. FITCH, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said George P. Fitch, and he did thereupon depose, testify, and say as follows, viz:

I am 63 years of age.

Question 1. State your name, age, and occupation.

Answer. George P. Fitch; age, 63; secretary of the Farmers' Loan and Trust Company; reside at No. 649 East Thirty-fourth street, New York City.

Q. 2. How long have you been such secretary?

A. For upwards of fifteen years; since 1858 I have been the entire time.

Q. 3. State whether you know a railroad corporation of Indiana, formerly called the New Albany and Salem Railroad Company, but for some years past known as the Louisville, New Albany and Chicago Railroad Company.

A. I do.

Q. 4. If you know of the existence of two mortgages executed by the said corporation in 1851 and 1852, to secure certain bonds
336 of said railroad company, state the amount of such mortgages respectively, and the rate per cent. of the bonds issued thereunder.

A. I know there was one mortgage to secure $500,000 of the ten per cent. bonds, and one mortgage to secure $2,325,000 of eight per cent. bonds.

Q. 5. State who was the trustee in both of the mortgages.

A. Douw D. Williamson.

Q. 6. How often, and at what place were the interest-coupons attached to the bonds you have above spoken of made payable?

A. The ten per cents, the coupons, were payable the first of April and first of October; and the eight per cents. were payable on the first of May and first of November, annually; they were payable at the office of the Farmers' Loan and Trust Company, city of New York.

Q. 7. State the manner in which such payment was made, whether by the company's agent or by the Farmers' Loan and Trust Company.

A. They were paid by the Farmers' Loan and Trust Company as presented.

Q. 8. From January, 1858 to 1864, state how much money, if any, was deposited with you by said railroad company or any one in behalf, to meet the interest-warrants falling due at your office?

Q. 9. Were any interest-warrants maturing after the 1st of January, 1858, paid during the period?

A. There were none.

Q. 10. State whether any money was provided by said company in the year 1864 to meet any of her interest-warrants falling due at your office.

A. There was.

Q. 11. Give the amounts, the date of such advance to the Farmers' Loan and Trust Company, and state from whom the money was received?

A. In September and October, 1864, D. D. Williamson, the trustee, paid to the company the sum of $118,000, to pay the coupons maturing October and November, 1859, on the eight and ten per cents. There were no other payments in 1864.

Q. 12. Give the date and amounts of all other payments by said Williamson to the Farmers' Loan and Trust Company to pay interest-warrants of the New Albany and Salem Railroad Company, if any such payments were afterwards made by him.

337 A. In January, 1865, he deposited with us $118,000 to pay the coupons maturing April and May, 1860; and in August, 1865, the further sum of $118,000 to pay the coupons maturing October and November, 1860; and in January, 1866, a further sum of $112,100 to pay the coupons maturing October and November, 1864, less Government tax.

Q. 13. Since January, 1866, to the present time, state whether any amount, and if so, how much, has been deposited with the Farmers' Loan and Trust Company by the said New Albany and Salem or the Louisville, New Albany & Chicago Railroad Company, or by said Williamson, or any other person, to pay the interest-warrants of said railroad company.

A. There had been nothing.

GEO. P. FITCH.

Subscribed and sworn to before me this 28th day of October, 1871.

EDWARD L. OWEN,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this 27th day of October, in the year of our Lord one thousand eight hundred and seventy one, I, Edward L.

Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at the office of the Farmers' Loan and Trust Company, 26 Exchange Place, in the city of New York, in the said southern district of New York, in the State aforesaid, George F. Talman, to testify and the truth to say, on the part and behalf of the complainant, in a certain suit or matter of contro-
338 versy now pending and undetermined in the circuit court of the United States for the district of Indiana, at Indianapolis, wherein Charles E. Bill is complainant against The Louisville, New Albany and Chicago Railroad Company and others.

And thereupon the said GEORGE F. TALMAN, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said George F. Talman, and he did thereupon depose, testify, and say as follows, viz:

I am 75 years of age.

Q. 1. State your name, age, residence, and occupation.

A. George F. Talman; residence, city of New York; 75 years of age.

Q. 2. How long have you been connected with the Farmers' Loan and Trust Company, and in what capacity?

A. I have been a director of the Farmers' Loan and Trust Company for upward of twenty years, and during that time have been chairman of the finance committee.

Q. 3. Were you at any time connected with the New Albany & Salem Railroad Company, afterward called the Louisville, New Albany and Chicago Railroad Company? If yes, state the period of time, and the capacity in which you were so connected.

A. I have been a director, as I believe, since 1858, and have been a stockholder and bondholder since 1852.

Q. 4. State whether you are familiar with the financial condition and transactions of the said New Albany and Salem Railroad Company, from 1858 to the present time

A. I believe I have been nearly all that time.

Q. 5. Who was in possession of and operating the line of railroad from New Albany to Michigan City, continuously, from October, 1858, to the last of the year 1864?

A. D. D. Williamson, the trustee of the mortgage-bonds, and the agents appointed by him. Williamson was also appointed special trustee by the circuit court of the United States for the district of Indiana.

Q. 6. Did the corporation itself, during that time, receive any revenue from the operation of the road?

A. Nothing.

Q. 7. From 1858 to September and October, 1864, state how much money, if any, was paid by the said Williamson on interest-
339 warrants on the eight and ten per cent. bonds issued by the New Albany and Salem Railroad Company?

A. There was nothing.

Q. 8. State if you know the reason for such non-payment?

A. I believe the road earned nothing, and previous to that time the revenues were used to pay expenses, and the special loan of $200,000 authorized by the circuit court.

Q. 9. Since September and October, 1864, to the present time, how many years' interest upon the eight and ten per cent. bonds issued by the New Albany and Salem Railroad Company, has been paid by said company or by said Williamson?

A. The company had paid nothing. Mr. Williamson, the trustee, has paid two years' interest, amounting to $466,100, paid in the years 1864, 1865, and 1866.

Q. 10. How long did the possession and management of the said line of railroad continue in Mr. Williamson?

A. Mr. Williamson and the agents appointed by him continued in possession until the 22d day of September, 1868, when James F. Joy was appointed receiver by the White common pleas court of Indiana, and as such receiver took possession.

Q. 11. Do you remember about what period the special loan of $200,000 was fully repaid by the said Williamson?

A. It was paid by installments between 1858 and 1864. The last installment was paid April, 1864.

Q. 12. At that date last mentioned, state what was the financial condition of the railroad company.

A. After the last installment of that special loan was paid, several years' interest was in arrear and unpaid, and the revenues of the road were inadequate to the accruing interest, without reference to those past due.

Q. 13. Do you know anything about a demand being made by any of the bondholders upon Williamson about that time? If so, state the particulars thereof as fully as you can.

A. A number of the first-mortgage bondholders, comprising about three-fourths of the ten and eight per cent. bonds, required Mr. Williamson to retain possession and operate the road, in consequence of the default in the payment of interest and the insolvency of the company.

Q. 14. State whether the bondholders of said road, at any time or
340 in any manner, directly or indirectly, during the period of Mr. Williamson's management and possession of said road, received any money on account of coupons or bonds, except as you have before stated.

A. None that I know of.

Q. 15. State whether you are familiar with the institution of an action in the common pleas court of White County, Indiana, in September, 1868, by D. D. Williamson, against the Louisville, New Albany and Chicago Railroad Company. If yea, state what your knowledge is concerning the institution of said suit.

A. In April, 1867, the bondholders, the holders of the ten and eight per cent. bonds, appointed a committee to receive the bonds, and to take charge of the interests of all the ten and eight per cent. bondholders. That committee consisted of Moses Taylor, Edward Minturn, Frederick Schuchardt, Charles P. Leverick, James H. Banker, John Steward, and George F. Talman. That *com*-committee made a demand in August, 1868, upon D. D. Williamson, to foreclose the said mortgages, which were given to secure their ten and eight per cent. bonds. The demand was made because a large amount of interest was due and un

paid upon said bonds; and there was no prospect, in the judgment of said committee, that the said road would ever pay said bonds. In pursuance of said demand, Mr. Williamson employed counsel and proceeded to foreclose said mortgages.

Q. 16. State who was the chairman of the committe of bondholders.

A. George T. Talman.

Q. 17. State whether the committee, or any of them specifically, directed the said Williamson to institute proceedings to foreclose the said mortgages in any particular court; and, if so, what one.

A. The direction to foreclose was general and designated no particular court.

Q. 18. State, if you know, under whose direction the suit was instituted in White common pleas court.

A. The suit was instituted in the White County court by the counsel for Mr. Williamson, and not in pursuance of the direction of the bondholders, or any of them.

Q. 19. State who the counsel were.

A. James F. Joy, of Detroit, Michigan; Henry Crawford, of Chicago, Ills.; and Hiram W. Chase, of Lafayette, Ind.

341 Q. 20. Had you, or the committee, any knowledge, at the time of the institution of said action, that any of the proceedings were pending in the Federal court of Indiana to foreclose the said mortgages, and had you any advice of the counsel in that regard; and, if so, state what that advice was.

A. I knew, and some of the committee knew, that a suit had been instituted in the circuit court of the United States for the district of Indiana, but the committee were advised by counsel, and believed that proceedings in that court had terminated, and that an entirely new action would have to be brought to foreclose, as that the court no longer had jurisdiction; that such was the unanimous advice given us by the counsel named above, and that after a long consultation upon that subject.

Q. 21. What, if any, knowledge had you at said time that the said Williamson had never rendered to the United States court of the district of Indiana any account of the trust committed to him under the decrees of said court?

A. I had no knowledge.

Q. 22. State who purchased the said property at the sale under the decree of the State court.

A. The purchase was made by the committee of bondholders for the benefit of all the ten and eight per cent. bondholders, through George L. Schuyler, their agent.

Q. 23. State what the instructions of the committee were to said Schuyler as to the amount he should bid upon said property.

A. Schuyler was instructed by the committee to bid the amount of $2,000,000, and no more.

Q. 24. At the time of such sale how much was justly due to the holders of the said ten and eight per cent. bonds?

A. Upwards of $5,000,000, I think.

Q. 25. You can state, generally, whether the said proceedings in White County, and the sale under the decree rendered by that court, and the purchase of the road by yourself and associates was or was not in pursuance of an agreement between the holders and said Williamson, to sell the property of said corporation and defraud its stockholders.

A. This suit was brought to secure the amount due the bondholders and for the benefit of the stockholders, if there was any surplus real-

ized from the sale, and not for the purpose of defrauding any of the stockholders, inasmuch as the first-mortgage bondhold-
342 ers were themselves owners of a very large majority of the stock of the company I myself owned 2,431 shares.

Q. 26. State whether the corporation formed by those who purchased the railroad under the decree of the State court, at any time or in any manner, became the owner of any of the eight per cent. or the ten per cent. mortgage-bonds of which you have previously spoken.

A. No, sir.

Q. 27. Were the bonds, or any of them, to your knowledge, ever in the custody of any of the agents of the said railroad company at any time after the sale under the decree of the State court?

A. No.

Q. 28. Who are the owners and the holders of the said eight and ten per cent. bonds at this time, and continually since the institution of the proceedings for the foreclosure in the State court.

A. The committee above named and the bondholders who deposited their bonds with them.

Q. 29. Has there been at any time a transfer of the ownership of said bonds, or any of them, by said committee, or a conversion of them into the stock of a corporation or so-called corporation called the Louisville, New Albany & Chicago Railway Company?

A. No.

Q. State whether you have any knowledge of a disbursement made by D. D. Williamson upon a subscription made for the improvement of the harbor of Michigan City, Indiana.

A. I know that Mr. Williamson made such subscription upon the request of some of the inhabitants of Michigan City, and was made after consultation and with the consent of the holders of a large amount of first-mortgage bonds and stock of the company, upon the belief that it would add largely to the receipts of the road.

GEORGE F. TALMAN.

Subscribed and sworn to before me this 27th day of October, 1871.

EDWARD L. OWEN,
U. S. Commissioner.

343 UNITED STATES OF AMERICA:
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this 27th day of October, in the year of our Lord one thousand eight hundred and seventy-one, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congr'ss entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at the office of the Farmers' Loan and Trust Company, No. 26 Exchange Place, in the city of New York, in the said

southern district of New York, in the State aforesaid, said George L. Schuyler, to testify and the truth to say, on the part and behalf of the complainant, in a certain suit or matter of controversy now pending and undetermined in the circuit court of the United States for the district of Indiana, at Indianapolis, wherein Charles E. Bill is complainant against The Louisville, New Albany and Chicago Railroad Company and others.

And thereupon the said GEORGE L. SCHUYLER, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said George L. Schuyler, and he did thereupon depose, testify, and say as follows, viz:

Question. What is your name, age, residence, and occupation?

Answer. My name is George L. Schuyler; age, 60 years; residence, Dobb's Ferry, Westchester County, New York.

Further examination adjourned to the 28th inst., at 1 p. m., at the same place.

OFFICE OF FARMERS' LOAN AND TRUST COMPANY,
Oct. 28th, 1871.

Present, commissioner, counsel for complainant, and witness.

Q. 2. State how long you have been familiar with the financial material condition of the Louisville, New Albany and Chicago Railroad Company.

344 A. From the spring of 1867 to the present time.

Q. State what experience you have had in the management, and what knowledge you have of the value of railroad property?

A. I have been more or less connected with the building and management of railways since the commencement of the railway system in this country to the present time.

Q. 4. State what official position, if any, you held in connection with the so-called corporation called the Louisville, New Albany and Chicago Railway Company?

A. President.

Q. 5. Who made the purchase of the line of railroad from New Albany to Michigan City, when the same was sold at Monticello, Indiana, under the decree of the White common pleas court?

A. I did, acting as agent for George F. Talman, Moses Taylor, Edward Minturn, Frederick Schuchardt, John Steward, Charles P. Leverick, and James H. Banker, who purchased, as a committee, for the benefit of themselves and all others interested in the eight and ten per cent. bonds of the New Albany and Salem Railroad Company.

Q. 6. State what instructions you had, if any, from the said committee, with regard to the amount which you were to bid upon said property at said sale?

A. I was instructed not to bid a higher sum than two millions of dollars.

Q. 7. State, if you know, whether any persons were in attendance at said sale, with the design of bidding upon said property, and what conversation you had with any such person with reference to such bidding.

A. Dillard Ricketts, president of the Jeffersonville Railroad Company, Washington C. Depauw and Richard J. Bright, directors in said company, were present at the sale, and advised me that they were there with the intention of bidding on the road if they could get it at a satis-

factory price. They stated that they would not bid to exceed a million and a half of dollars. I informed them that they might have it for two millions of dollars, and urged them strongly to bid that amount and take the road. They declined on the ground that the property was not worth that money, and withdrew from the sale.

Q. 8. State how much was due to the holders of the eight and ten per cent. bonds, by way of principal and unpaid interest, at the time of such sale.

345 A. Five millions of dollars and interest for some months.

Q. 9. Are you familiar with the facts attending the institution of the suit in the name of Douw D. Williamson, against the Louisville, New Albany and Chicago Railroad Company, in the White common pleas court of Indiana, in the fall of 1868?

A. I am.

Q. 10. State the circumstances and agreements, or instructions under which the said action was instituted.

A. Finding that the revenues of the property was wholly inadequate to meet the accruing interest, there being large arrears of unpaid interest, it was determined to foreclose the mortgages by the sale of the property. The committee therefore made a final demand upon Mr. Williamson, trustee, to institute the necessary proceedings for a foreclosure. The proceedings were intrusted for their legal management to Henry Crawford, Hiram W. Chase, and James F. Joy, as counsel, under general instructions to take such steps as were necessary.

Q. 11. State whether in the demand made by the committee any reference was made to any particular court in which such proceedings should be had.

A. None whatever, nor did the committee from the beginning, or at any time, give any instructions as to the management of the legal proceedings. Every step was taken solely upon the responsibility of the counsel employed.

Q. 12. Were you present at any time of said period at a consultation with any of the counsel employed for the purpose of foreclosure proceedings? If so, state what the conclusion and advice of such counsel was.

A. I was present at two meetings of counsel, at which it was decided that the proper course to pursue was to commence new proceedings in one of the State courts of Indiana. Allusion being made to some old proceedings in United States courts, counsel unanimously agreed that that court had no longer jurisdiction of the matter, therefore it was thought more convenient and less expensive to make use of the State courts.

Q. 13. State whether you have detailed the entire agreement or instruction under which, and the reason for which, suit was so instituted in the White common pleas court.

A. I have.

Q. 14. At the time of the institution of said action in the State
346 court, what was the actual value of the line of railroad owned by the said Louisville, New Albany & Chicago Railroad Company, with all its appurtenances, equipments, and assets, of every character?

A. It was worth about eighteen hundred thousand dollars.

Q. 15. State, if you know, what its gross revenue was for, say a year preceding August, 1868?

A. About seven or eight hundred thousand dollars, from all sources.

Q. 16. State what its condition then was, as to iron, roadway, bridges, equipments, &c.

A. Very bad in all those particulars.

Q. 17. What is the length of the road from New Albany to Michigan City?

A. Two hundred and eighty-eight miles.

Q. 18. Is a gross revenue of seven or eight hundred thousand dollars per annum a fair average of receipts for a road of two hundred and eighty-eight miles, as judged by the ordinary receipts of other roads?

A. Far below.

Q. 19. What was the net revenue, if any, from the operation of the road for the year preceding August, 1868?

A. There was not any net revenue; but, in my opinion, the expenses of operating the road were greater than the receipts.

Q. 20. State whether any money, during that time, was paid by way of interest upon the ten per cent. and eight per cent. bonded liability of the said railroad company.

A. None was paid.

Q. 21. After the organization of the so-called corporation, the Louisville, New Albany & Chicago Railway Company, how many of the eight and ten per cent. bonds of the New Albany & Salem Railroad Company were ever transferred or surrendered to, or held by the said railway company?

A. They never held any, nor were any at any time transferred. They had no connection or interest in said bonds.

Q. 22. Were any of said bonds at any time in the custody of the said railway company, its officers, or agents?

A. No.

Q. 23. How many of said bonds, if any, were at any time surrendered to or converted into the stock of the Louisville, New Albany & Chicago Railway Company.

A. Not any.

347 Q. 24. State, if you know, who were the owners and holders of the eight and ten per cent. bonds lodged with the officers of the White common pleas court, and who are now the owners and holders of the same.

A. The committee of bondholders heretofore named, for themselves and their associate bondholders, owned the bonds at the time they were deposited with the clerk and sheriff of said White common pleas court, and owned them from that time, and still own them.

Q. 25. Are you familiar with the revenues derived and expenditures made by said railroad company during the period that the same was occupied by James F. Joy, claiming to act as receiver under the decree of the said White common pleas court?

A. I am.

Q. 26. How much, if any, was paid out during said period, by way of interest upon the ten per cent. and eight per cent. bonds of said company?

A. Nothing was paid.

Q. 27. State whether any persons, except holders of bonds issued under the said ten per cent. and eight per cent. mortgage, composed the so-called Louisville, New Albany & Chicago Railway Company.

A. No others.

Q. 28. Of the amount realized from the operation of said line of railroad from the purchase under the decree of the White common pleas court to the present time, how much has been, in any manner, distributed to its different shareholders?

A. About one hundred and eighty thousand dollars was divided among the stockholders in two dividends; the rest of the revenue was used in operating the road and paying its liabilities.

Q. 29. State what, in your opinion, is the present value of the said line of railroad from New Albany to Michigan City, including its equipments and assets of every description.

A. Two millions; and it has not yet earned a net revenue of more than six per cent. of that amount.

Q. 30. State about what amount is now due to the holders of the ten per cent. and eight per cent. mortgage-bonds, by way of unpaid interest and principal and interest.

A. About six millions.

348 Further examination of above witness adjourned to the 30th, at 3 p. m., at the same place.

OFFICE OF THE FARMERS' LOAN AND TRUST COMPANY,
October 30, 1871.

Present, commissioner, counsel for complainant, and witness, whose examination is resumed.

Q. 31. During the period when the so-called corporation, the Louisville, New Albany and Chicago Railway Company was in possession of and operating the said line of railroad from New Albany to Michigan City, who actually received and disbursed the moneys arising from the operation of said road?

A. William H. Lewis, the treasurer.

Q. 32. State whether any other person received or disbursed any of the moneys?

A. No other person.

Q. 33. State whether you know the circumstances under which Charles E. Bill gave directions and authority for the substitution of his name as complainant in the present proceeding.

A. I do.

Q. 34. State, as particularly as you can, any agreement or arrangement entered into between the said Bill and the said committee of bondholders, or any of them, or any instructions given by them, or any of them to said Bill, as to the manner in which he should discharge his trust.

A. Mr. Bill was served with notice to substitute himself as complainant in place of Mr. Williamson, deceased. He placed this notice in the hands of Mr. Henry Crawford, counsel, with instructions to take such steps as were necessary. No agreement was made with Mr. Bill by any of the bondholders, nor any instructions given by them, or any of them, as to what course counsel should pursue.

GEORGE L. SCHUYLER.

Subscribed and sworn to before me this 30th day of October, 1871.

EDWARD L. OWEN,
U. S. Commissioner.

349 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this 10th day of April, in the year of our Lord one thousand eight hundred and seventy-two, I, Edward L. Owen, a com'issioner duly appointed by the circuit court of the United States

A. Very bad in all those particulars.

Q. 17. What is the length of the road from New Albany to Michigan City?

A. Two hundred and eighty-eight miles.

Q. 18. Is a gross revenue of seven or eight hundred thousand dollars per annum a fair average of receipts for a road of two hundred and eighty-eight miles, as judged by the ordinary receipts of other roads?

A. Far below.

Q. 19. What was the net revenue, if any, from the operation of the road for the year preceding August, 1868?

A. There was not any net revenue; but, in my opinion, the expenses of operating the road were greater than the receipts.

Q. 20. State whether any money, during that time, was paid by way of interest upon the ten per cent. and eight per cent. bonded liability of the said railroad company.

A. None was paid.

Q. 21. After the organization of the so-called corporation, the Louisville, New Albany & Chicago Railway Company, how many of the eight and ten per cent. bonds of the New Albany & Salem Railroad Company were ever transferred or surrendered to, or held by the said railway company?

A. They never held any, nor were any at any time transferred. They had no connection or interest in said bonds.

Q. 22. Were any of said bonds at any time in the custody of the said railway company, its officers, or agents?

A. No.

Q. 23. How many of said bonds, if any, were at any time surrendered to or converted into the stock of the Louisville, New Albany & Chicago Railway Company.

A. Not any.

347 Q. 24. State, if you know, who were the owners and holders of the eight and ten per cent. bonds lodged with the officers of the White common pleas court, and who are now the owners and holders of the same.

A. The committee of bondholders heretofore named, for themselves and their associate bondholders, owned the bonds at the time they were deposited with the clerk and sheriff of said White common pleas court, and owned them from that time, and still own them.

Q. 25. Are you familiar with the revenues derived and expenditures made by said railroad company during the period that the same was occupied by James F. Joy, claiming to act as receiver under the decree of the said White common pleas court?

A. I am.

Q. 26. How much, if any, was paid out during said period, by way of interest upon the ten per cent. and eight per cent. bonds of said company?

A. Nothing was paid.

Q. 27. State whether any persons, except holders of bonds issued under the said ten per cent. and eight per cent. mortgage, composed the so-called Louisville, New Albany & Chicago Railway Company.

A. No others.

Q. 28. Of the amount realized from the operation of said line of railroad from the purchase under the decree of the White common pleas court to the present time, how much has been, in any manner, distributed to its different shareholders?

A. About one hundred and eighty thousand dollars was divided among the stockholders in two dividends; the rest of the revenue was used in operating the road and paying its liabilities.

Q. 29. State what, in your opinion, is the present value of the said line of railroad from New Albany to Michigan City, including its equipments and assets of every description.

A. Two millions; and it has not yet earned a net revenue of more than six per cent. of that amount.

Q. 30. State about what amount is now due to the holders of the ten per cent. and eight per cent. mortgage-bonds, by way of unpaid interest and principal and interest.

A. About six millions.

348 Further examination of above witness adjourned to the 30th, at 3 p. m., at the same place.

OFFICE OF THE FARMERS' LOAN AND TRUST COMPANY,
October 30, 1871.

Present, commissioner, counsel for complainant, and witness, whose examination is resumed.

Q. 31. During the period when the so-called corporation, the Louisville, New Albany and Chicago Railway Company was in possession of and operating the said line of railroad from New Albany to Michigan City, who actually received and disbursed the moneys arising from the operation of said road?

A. William H. Lewis, the treasurer.

Q. 32. State whether any other person received or disbursed any of the moneys?

A. No other person.

Q. 33. State whether you know the circumstances under which Charles E. Bill gave directions and authority for the substitution of his name as complainant in the present proceeding.

A. I do.

Q. 34. State, as particularly as you can, any agreement or arrangement entered into between the said Bill and the said committee of bondholders, or any of them, or any instructions given by them, or any of them to said Bill, as to the manner in which he should discharge his trust.

A. Mr. Bill was served with notice to substitute himself as complainant in place of Mr. Williamson, deceased. He placed this notice in the hands of Mr. Henry Crawford, counsel, with instructions to take such steps as were necessary. No agreement was made with Mr. Bill by any of the bondholders, nor any instructions given by them, or any of them, as to what course counsel should pursue.

GEORGE L. SCHUYLER.

Subscribed and sworn to before me this 30th day of October, 1871.
EDWARD L. OWEN,
U. S. Commissioner.

349 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this 10th day of April, in the year of our Lord one thousand eight hundred and seventy-two, I, Edward L. Owen, a com'issioner duly appointed by the circuit court of the United States

for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1779, did call and cause to be and personally to appear before me, at the office of the Farmers' Loan and Trust Company, 26 Exchange Place, in the city of New York, in the said southern district of New York, in the State aforesaid, George F. Talman, to testify upon cross-examination, and the truth to say, on the part and behalf of the complainant in a certain suit or matter of controversy, now pending and undetermined in the circuit court of the United States for the district of Indiana, at Indianapolis, wherein Charles E. Bill, trustee, &c., is complainant, and The Louisville, New Albany and Chicago Railroad Company and others are defendants.

And thereupon the said GEORGE F. TALMAN, having been by me first cautioned and sworn to testify upon cross-examination the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said George F. Talman, and he did thereupon depose, testify, and say as follows, viz:

I am 76 years of age.

Pursuant to notice, counsel for intervening defendant, John S. Shaw and others, appear.

Question 1. In your answer to the 8th question of your examination-in-chief, you state, I believe, the road earned nothing, and previous to that time, and the revenues were used to pay expenses, and a special loan of $200,000 authorized by the circuit court. The time referred to in that answer was the year 1864, was it not?

350 I believe it was; the accounts will show that it was after the $200,000 special loan to the trustee was paid off.

Q. 2. According to your recollection, was no other debt paid by the special trustee between 1858 and 1864?

A. Not that I know of, outside of the expenses.

Q. 3. Was the money provided by the company to enable the *the* special trustee to make his final payment upon the special loan referred to, applied to that object as soon as it came into his hands for that purpose?

A. The money ($200,000) was furnished to the special trustee by the first-mortgage bondholders, or by such of them as subscribed to the loan, and the loan so subscribed was paid off by the trustee by installments as soon as he received from the earnings of the road money to make the payments with.

Q. 4. In speaking of a demand being made on Mr. Williamson in consequence of a default in payment of interest and the insolvency of the company, about the time the special loan had been paid, you state that a number of the bondholders comprising about three-fourths of eight and ten per cent. bonds, made that request. Was it communicated to Mr. Williamson in writing?

A. I don't remember whether it was in writing or verbal.

Q. 5. Where did Mr. Williamson have his office, if any, in the city of New York, during the time of his trusteeship?

A. The office in New York was at the office of the Farmers' Loan and Trust Company, of which company he was president part of the

time. He resigned the presidency of the Farmers' Loan and Trust Company for the purpose of giving his whole time and attention to this road of which he was trustee, and a committee of the first-mortgage bondholders had been appointed to advise and communicate with him.

Q. 6. In April, 1867, when the holders of the ten and eight per cent. bonds appointed a committee consisting of yourself and others to receive the bonds and to take charge of the interest of all the ten and eight per cent. bondholders, what persons were in attendance?

A. In April, 1867, a committee of seven was appointed without any meeting specially for that purpose, but the committee was appointed in the following manner: Finding at that time no prospect of
351 ever receiving the amount of principal and interest of the first-mortgage bonds from the road, several holders of large amounts of the first-mortgage bonds, being the president and directors of the Farmers' Loan and Trust Company, Moses Taylor, Frederick Schuchardt, John Steward, Charles P. Leverich, and George F. Talman, prepared a subscription-paper for the first-mortgage bondholders to form an association, (a copy of which I now annex to my deposition, the same being marked A, E. L. O., U. S. Com'r, April 10, 1872,) which articles of association were presented to and subscribed by the first-mortgage bondholders, and their bonds deposited according to the provisions of those articles, with the committee therein named; and the committee therein named directed the foreclosure of the eight and ten per cent. mortgages for the mutual benefit of all the first-mortgage bondholders, and all the first-mortgage bonds were subscribed under those articles of association, except, I think, about $40,000 of the eight per cents, and about $7,000 of the ten per cents, and the committee have always extended to the bondholders who did not subscribe an equal participation with them in the proceedings subsequent to the decree and sale; the committee acting thoughout for the interest of all the first-mortgage bondholders.

Q. 7. At the time that this agreement was prepared to present to the bondholders, had you or any other person on behalf of the bondholders, any interview with Mr. Joy, Mr. Crawford, and Mr. Chase, or either of them, respecting the recapitalization contemplated by this agreement A?

A. No; not that I know of.

Q. 8. How soon after this paper had been submitted to the bondholders did you have a consultation with Mr. Joy and the other attorneys?

A. That I don't remember. I don't remember any particular consultation after the signing of that paper. Up to the time of Mr. Williamson's death all our consultations and directions were with him. After Mr. Williamson's death the proceedings to foreclosure were directed by the committee of bondholders, and Mr. Crawford and Mr. Joy were employed as counsel for the association. The directions for the foreclosure were made through Charles E. Bill, the succeeding trustee. Charles E. Bill, president of the Bank of New York, was named as trustee to succeed Mr. Williamson, in the event of Mr. Williamson's death or resignation as trustee.

Q. 9. Had you, prior to the employment by Mr. Williamson of
352 Mr. Joy and others as counsel, been informed of a proceeding instituted against the company and Williamson in the White common pleas court of Indiana, by one Horner, to foreclose a mortgage of subsequent date to that of 1852, against the company, in which Mr. Crawford had appeared as the counsel for Horner, and Mr. Joy and Mr. Chase had appeared as the counsel for the company, and in behalf of

the holders of the ten and eight per cent. bonds, in which proceeding an attempt was made on the part of Horner to place the road in the hands of a receiver?

A. I was informed of a suit of some kind commenced by Horner. I never saw any of the papers, and do not know what it was for. I was informed of a suit commenced, and that Mr. Crawford was counsel for Horner, and Mr. Chase and Mr. Joy counsel for the trustee, Mr. Williamson.

Q. 10. How soon after your committee had instructed Mr. Williamson to proceed to foreclose were you advised that Mr. Joy, Mr. Crawford, and Mr. Chase were the counsel employed by Mr. Williamson to prosecute the suit to foreclosure?

A. I suppose shortly before the time when the suit was commenced.

Q. 11. At any time before the institution of the proceeding in the White common pleas court, by Williamson, did you or your fellow members of the committee have a consultation here or elsewhere with the solicitors employed by Willamson?

A. I don't remember any consultation, but there were constant meetings from time to time of the committee of the associates, and correspondence, through Mr. Williamson, with the counsel, Mr. Joy and Mr. Chase.

Q. 12. Had not Mr. Chase and Mr. Crawford met with you at the office of the Farmers' Loan and Trust Company in New York, prior to the dismissal of the Horner case, with a view of reconciling their differences on that case?

A. I have no recollection of any such meeting. I don't think I ever saw Mr. Crawford until after the Horner suit was ended.

Q. 13. Had you been informed by Mr. Chase about a judgment recovered early in 1867, in the White common pleas court, in favor of Phineas N. Kent, Bela C. Kent, and Henry Crawford, against the Louisville, New Albany and Chicago Railroad Company?

A. I had.

353 Q. 14. Had you seen the transcript of the record in that case?

A. I think I did. I think Mr. Chase sent on a statement.

Q. 15. At the time Mr. Williamson contracted with Gen. Burnside for the sale of that portion of the company's road know' as the Gosport Branch, were you advised of the sale?

A. I was, and advised Mr. Williamson to make sale. I was informed and believed when I advised Mr. Williamson to make such sale, that whatever rights the New Albany and Salem Railroad had in that Gosport branch, had been entirely forfeited and was worthless; and so it was claimed by General Burnside, but said that he was willing to pay something to remove any doubt on that subject, to form part of a road he was building; and I considered all that Mr. Williamson obtained for it as clear gain to the parties interested.

Q. 16. Did you so inform Mr. Williamson?

A. Yes.

Q. 17. Under what authority was it supposed by you and Mr. Williamson that he could make such sale?

A. I supposed that the sale was nothing more than a release of any claims that the New Albany and Salem Road had upon that branch.

Q. 18. Did not Mr. Williamson inform you that he had obtained authority from the Federal court to make the sale?

A. No sir. The agreement to sell and release was made without any reference to the Federal court. After it had been made, General Burnside said that the counsel of the company to whom the sale was made, said they required the authorization of the Federal court to make the

sale, or they thought it was necessary. I did not deem any such order necessary, but Mr. Williamson consented to make an application for such order, and did make it. At that time all hope that anything would ever be received from the New Albany and Salem Railroad, sufficient to pay the first mortgage, was at an end, and none of the holders of the junior encumbrances or claims within my knowledge at that time had any hope of ever receiving anything. The first-mortgage bonds previous to that time had sold at public auction and private sale, in New York, at prices varying between ten and forty or fifty-five per cent. of the principal of the first-mortgage bonds.

Q. 19. In your answer to the 20th question of the examination-in-chief, you say, "I knew and some of the committee knew that a suit
354 had been instituted in the circuit court of the United States, but the committee were advised by counsel, and believed that the proceedings in that court had terminated, and that an entirely new action would have to be brought to foreclose, as that court had no longer jurisdiction;" that such was the unanimous advice given us by the "counsel named above, and after a long consultation on that subject." When and where was that consultation, and when and by whom was its result communicated to the committee?

A. The consultations of the committee were in New York. The consultations of the counsel, as far as I remember, were somewhere in Indiana or at Detroit. Their opinion that the proceedings in the United States court were terminated, and that new proceedings would have to be commenced, was communicated to the committee shortly before the commencement of the suit in the White County court and by the counsel.

Q. 20. Were the purchase made by a committee of bondholders under the White County proceeding, and the transactions thereafter had in the organization known as the Louisville, New Albany and Chicago Railway Company, in pursuance of the plan set forth in the agreement of April 16th, 1867, made an exhibit in this your deposition?

A. The purchase was made by the committee for the benefit of the first-mortgage bondholders, and the money bid was furnished by the committee to give those bondholders who had not come into the association and deposited their bonds the choice either to come in and participate in the purchase with the others, or take their share of the purchase-money bid.

Q. 21. If they elected to participate, in what way were they to so participate?

A. By receiving stock in the new company organized on equal terms with the other bondholders.

Q. 22. What were those terms? And did any persons other than those who had participated in the proceedings in White County elect to accept them?

A. The terms were to receive the same proportion of stock in the new company as the others had received: and many bondholders who resided in Europe came in and deposited their bonds, and received certificates of stock in the same proportion as the others had received them.

Q. 23. What proportion of the ten and eight per cent. bonds were so treated?

355 A. I think all the ten per cent. bonds, except five or four, and all the eight-per-cent. bonds, except about forty.

Q. 24. After the organization of the new company so formed what disposition was made of the earnings of the company's road after the expenses were paid?

A. They were divided among the stockholders of the new company.

Q. 25. What amount was so divided?

A. My impression is there were two dividends, amounting to about ninety thousand dollars each.

Q. 26. Through whom did those persons in Europe and others, who elected to come into the arrangement after the sale, transact their business by which they acquired certificates of stock in the new company?

A. Mr. Frederick Schuchardt was the agent for some. Mr. Mahli, and others, whose names I do not remember, when they delivered the bonds here and requested to come into the participation, the stock was issued to the person represented to be the owners of the bonds, and not to the agents. Some parties, after the sale under the decree and the formation of the new company, among whom was Mr. Shaw, preferred selling their first-mortgage bonds, and the stock was given to the purchasers.

Q. 27. Where was the business of the new company transacted after its formation, so far as related to the transfer of its stocks and bonds?

A. In New York, at the office of the Farmers' Loan and Trust Company.

Q. 28. Was it the custom when parties had elected to participate in the new organization to have their bonds first placed in the hands of the bondholders' association?

A. Almost all the bonds, or a large proportion of them, were placed in the hands of the committee of the associates before the sale and organization of the new company. Those who came in afterward to participate delivered their bonds to the committee of the associates, and the bonds were held by that committee the same as the others.

Q. 29. What disposition did they make of that class of bonds after they came into their possession? I mean the bonds the committee received after the new organization.

A. They were delivered, in pursuance of the decree, to the White County court.

356 Q. 30. Were they not transmitted to Mr. Lewis, the secretary and treasurer of the new company, and by him forwarded?

A. I cannot state certainly now whether carried by our counsel to the court or whether they were sent through Mr. Lewis to the court.

Q. 31. Was there any other amount of money derived from the earnings of the road than the two dividends testified about placed in the custody of the Farmers' Loan and Trust Company, or received by that company after the formation of the new organization?

A. After the new organization was formed all the moneys deposited in the Farmers' Loan and Trust Company were deposited to the credit of the company, and, I believe, an account with the president of the company. There was no other amount of money after the two dividends that were derived from the earnings of the road.

Q. 32. At what periods were the two dividends referred to declared?

A. The first dividend was declared February 5, 1870; the second dividend was declared the 12th of December, 1870.

Q. 33. What amount of the earnings of the road was remitted to the Farmers' Loan and Trust Company after the 1st day of December, 1870, and at what date?

A. The whole amount remitted after the 1st day of December, 1870, was $87,021, of which $67,470.66 was received on the 12th of December, and $22,550.34 was received on the 15th of December.

Further examination of this witness continued to the 11th, at 11 a. m.

APRIL 11TH.—Present, counsel for intervening defendants, John S. Shaw and others, and counsel for complainant.

The witness desires to explain and correct his answer to the 33d question:

The $60,000 was received at the following dates: August 22d, $20,000; September 22d, $20,000; and November 7th, $20,000. These, added to the balance to the credit of the company, make the $64,470.66.

357 This amount was held by the Farmers' Loan and Trust Company to the credit of the railway company. Twenty-five thousand dollars was received the 15th of December, 1870, which was the only sum received after the 1st of December, 1870.

GEO. F. TALMAN.

Subscribed and sworn to before this 11th day of April, 1872.

EDWARD L. OWEN,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this eleventh day of April, in the year of our Lord one thousand eight hundred and seventy-two, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1, 1817; and the act, entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at the office of the Farmers' Loan and Trust Company, 26 Exchange Place, in the city of New York, in the said southern district of New York, in the State aforesaid, George L. Schuyler, to testify, upon cross-examination, and the truth to say on the part and behalf of the complainant in a certain suit or matter of controversy now pending and undetermined in the circuit court of the United States for the district of Indiana, at Indianapolis, wherein Charles E. Bill, trustee, &c., is complainant, and the Louisville, New Albany and Chicago Railroad Company and others are defendants.

And thereupon the said GEORGE L. SCHUYLER having been by me first cautioned and then sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said George L. Schuyler, and he did thereupon depose, testify, and say as follows, viz:

I am sixty years of age.

(Pursuant to adjournment, present, counsel for intervening defendants, John S. Shaw and others, and counsel for complainant.)

358 Q. 1. Prior to the spring of 1867, when you first became familiar with the condition of the Louisville, New Albany and Chicago

Railroad Company, had you been the holder of any of the bonds of that company?

(Objected to because it is not cross-examination and not pertinent to the matter in inquiry.)

A. No, I had not.

Q. 2. When did you first become associated with that committee of bondholders as their agent?

A. I never was their agent, except for the purpose of purchasing this property when it was sold at auction.

Q. 3. When was it that the committee of the holders of the ten and eight per cent. bonds made a formal demand upon Mr. Williamson to institute the necessary proceedings for a foreclosure, about which you testify in answer to your 10th question to your examination-in-chief?

A. It was in the summer of 1868.

Q. 4. Were you present when that demand was communicated to Mr. Williamson?

A. I don't remember.

Q. 5. Where were the two meetings of counsel held at which it was decided that the proper course to pursue was to commence new proceedings?

A. In this office.

Q. 6. Who were present at each of those meetings?

A. I can't remember all who were present. I can name some: Mr. Talman, Ralston, myself, Mr. Joy, and Mr. Crawford, and other gentlemen interested; but the particular names at those particular meetings I can't give.

Q. 7. Was Mr. Chase present at either of those meetings?

A. Not that I remember. He may have been.

Q. 8. What period elapsed between the first and second meeting?

A. I do not remember.

Q. 9. Was Mr. Williamson present?

A. I don't remember.

Q. 10. By whom was allusion made to some old proceedings in the United States court, and what was said about it?

A. By myself, certainly, and, I think, by Mr. Talman also. In discussing the mode of foreclosing the mortgage-bonds, counsel
359 having advised us that it was best to do so in the State courts, the question was started as to whether there was anything in the position of the company's affairs in connection with the jurisdiction of the United States courts which render it necessary or advisable to have proceedings for the foreclosure made in that court. It was the opinion of counsel that there was no such necessity, and it was in every way better suited for the interest and rights of all the parties concerned to apply for a decree of sale to the State courts of Indiana; and from that time the matter was left wholly in the hands of the counsel, without further instructions that I am aware of from any one, to carry out what was supposed the proper and lawful mode of foreclosing these mortgages.

Q. 11. Were the committee made aware at these meetings, or either of them, of the fact that but recently before that time the question of the jurisdiction of the State courts had been discussed in an action instituted in the White common pleas court, in favor of one Horner, and against the said railroad company and others, and that Mr. Joy had maintained that the jurisdiction was in the Federal court, and that Mr. Crawford had maintained the adverse proposition?

(Objected to because it is not cross-examination; it is irrelevant, and assumes something that has not been in proof.)

A. I don't believe that they ever heard the name of Horner at all, nor was there any discussion as to details, only the general questions were talked about.

Q. 12. When did you first become interested as one of the holders of bonds of the company?

A. The 1st of September, 1868.

Q. 13. When you were present at the two meetings had you any interest in the subject-matter of those discussions?

A. Yes.

Q. 14. In what way had you become interested?

A. I had the option to make the purchase of the bonds I now hold.

Q. 15. At about what time did you acquire that option?

A. Parties interested in these bonds, after my return from Europe, December, 1866, were constantly pressing me to take the practical charge and management of the Louisville, New Albany and Chicago Railroad, and among other inducements for doing so, agreed that
360 they would at any time arrange that I should have a large amount of these bonds whenever I chose to take them, upon certain specified terms.

Q. 16. Look at the exhibit marked A, and made a part of Mr. Talman's deposition, and state whether you became a participant in the plan agreed upon as set forth in that exhibit?

A. Yes.

Q. 17. At what time did you become such a participant?

A. I don't remember the date.

Q. 18. Were you present at any time when negotiations were going on between persons interested in the Louisville, New Albany and Chicago Railroad Company and General Burnside about the sale of the Gosport branch of that company's road?

A. I think not.

Q. 19. In the division of the $180,000 which you say was divided among the stockholders in two dividends, to whom where those dividends paid, and on what account?

A. They were paid to the stockholders and on account of the net earnings of the road. I cannot remember the names of the stockholders of a corporation of three millions of stock, especially when I do not keep the stock books.

Q. 20. Are the names so very numerous that having access, as president of the company, to the books of the company, you could not furnish them.

A. Yes, they are.

Q. 21. Who is the custodian of the stock books of that new company?

A. Before the receiver was appointed they were kept here.

Q. 22. Have they been removed into his hands since his appointment?

A. I don't know.

Q. 23. By whom were the entries kept?

A. The Farmers' Loan and Trust Company, New York, were in charge of those books, and were responsible to the railway company.

Q. 24. How many of the directors of the Farmers' Loan and Trust Company were acting as directors of the railway company of which you was president?

(Objected to.)

A. I don't know.

Q. 25. If Mr. Joy, as you say, was employed as one of the
361 counsel to prosecute the proceeding of foreclosure, do you know how it happened that his name never appeared as such in that proceeding?

A. No.

Q. 26. Was it not agreed and understood in your presence that Mr. Joy's name should not appear as counsel, so that he might become the receiver, pending the proceedings for foreclosure?

A. No.

Q. 27. In reference to the $180,000 that was divided in two dividends, at what time or times were the moneys remitted to the Farmers' Loan and Trust Company for that purpose?

A. Remittances were made of surplus funds on hand in Indiana, from time to time, to the Farmers' Loan and Trust Company, New York, which company allowed interest on these deposits, and when these dividends were declared, paid the money to the stockholders. The books of the railway company show the exact date and amount of each remittance.

Q. 28. Were these funds deposited with the Farmers' Loan and Trust Company to your credit as president of the railway company?

A. Yes.

Q. 29. Did you yourself keep a bank-book in which the accounts of these deposits were entered.

A. I kept no bank-book.

Q. 30. Is Charles E. Bill, the trustee complainant, in any way interested in the bonds secured by the first and second mortgages?

(Objected to as not cross-examination and irrelevant to the matter in issue.)

A. I don't know.

Q. 31. Was he a shareholder in the railway company of which you was president?

A. I don't know that either.

(Question objected to on the same grounds as stated to the 30th question.)

Q. 32. Were you present in the city of Indianapolis in the latter part of November, 1870, and in court-room at the time that Judge Drummond delivered his opinion and directed a receiver to be appointed?

A. No.

Q. 33. Were you not in the city of Indianapolis at that time?
362 A. No.

Q. 34. Did you, in company with Judge Chapman, the receiver appointed by the court, visit the office of the company at New Albany?

(Objected to because it is not cross-examination; it is original inquiry and is irrelevant to the matter in issue.)

A. I did.

Q. 35. At about what time was that with reference to the appointment of the receiver by the court?

A. It was a day or two after his appointment.

Q. 36. Was it not the Saturday following?

A. I don't recollect the day, but we went up to Lafayette on Sunday, which, I think, was the next day.

Q. 37. What amount of the two dividends amounting to $180,000, of which you testify in chief, was distributed or divided among the shareholders by the railway company after you had so visited the office at New Albany?

A. About one-half.

Q. 38. Were you present at the meeting of the directors of the railway company when that last dividend was declared?

A. I was.

Q. 39. Did you at that time, or had you before, advised the members of the board of directors of the facts in reference to the appointment of the receiver?

(Objected to as not cross-examination, as original matter, as leading, and as irrelevant.)

A. I had advised them before.

Q. 40. At what time was that meeting held at which the last dividend was declared?

A. It was held immediately after receiving a communication from Mr. Joy, stating, from an interview with Judge Drummond in relation to an appeal of the case, it was proper for the directors to hold a meeting and declare a dividend if they thought fit. This was some time in December, 1870. The exact date can be obtained, if required, from the minutes of the company.

Q. 41. Did most of the stockholders reside in the vicinity of where the meeting was held, so that their money was paid to them on the dividend so declared at once?

(Objected to as not cross-examination, and as irrelevant.)

A. I don't know the residences, in the city of New York, of
363 of any of the stockholders, except those who are my personal friends, and therefore I cannot answer the question in detail.

Q. 42. Have you access, or could you have access conveniently, to the book in which the account of dividends distributed among the shareholders of that company were kept?

(Objected to as not cross-examination, and as irrelevant and incompetent.)

A. Before the appointment of receiver I could have access to any of the books of that company.

Q. 43. Did you not have access to these books after this appointment, and after that last dividend was declared?

(Objected to as not cross-examination, and as irrelevant and incompetent.)

A. I don't know, as I never had any occasion to call for them.

Q. 44. Will you please give the names of the directors of that company at the time the last dividend was declared?

A. George F. Talman, Moses Taylor, Frederick Schuchardt, James H. Banker, Edward Minturn, Charles P. Leverick, John Steward, James F. Joy, George L. Schuyler, John Jacob Astor, Jonathan T. Wells, Isaac Bell, and Roswell G. Rolston.

Q. 45. Was Mr. Joy present at that meeting?

A. No; he was not.

GEORGE L. SCHUYLER.

Subscribed and sworn to before me this 11th day of April, 1872.

EDWARD L. OWEN,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this 11th day of April, in the year of our Lord one thousand eight hundred and seventy-two, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States

for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1812, and the act of Congress entitled "An act in addition to an act for the more convenient taking of affidavits and bail in civil causes depending in
364 the courts of the United States," passed March 1, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at the office of the Farmers' Loan and Trust Company, No. 26 Exchange Place, in the city of New York, in the said southern district of New York, in the State aforesaid, George P. Fitch to testify, upon cross-examination, and the truth to say, on the part and behalf of the complainant in a certain suit or matter of controversy now pending and undetermined in the circuit court of the United States for the district of Indiana, at Indianapolis, wherein Charles E. Bill, trustee, &c., is complainant, and the Louisville, New Albany and Chicago Railroad Company and others are defendants.

And thereupon the said GEORGE P. FITCH, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said George P. Fitch, and he did thereupon depose, testify, and say as follows, viz:

I am 62 years of age.

Question. 1. You state in your examination-in-chief that you know of the existence of two mortgages executed by the New Albany and Salem Railroad Company in the years 1851 and 1852. Do you know of the existence of any other mortgages executed by that same company?

(Objected to as not cross-examination and irrelevant.)

Answer. So far as my memory goes I think there were second and third mortgages executed.

Q. 2. What knowledge have you of a company of a corporate name, the Louisville, New Albany and Chicago Railway Company?

A. I don't know that I have any knowledge of it further than having heard of the existence of such company.

Q. As secretary of the Farmers' Loan and Trust Company, were your duties in respect to the Louisville, New Albany and Chicago Railway Company of the same character as were your duties in respect to the New Albany and Salem Railroad Company, and the Louisville, New Albany and Chicago Railroad Company?

A. Yes, sir; I believe they were.

Q. 4. In your answer to the 13th question of your examination-in-chief you say that "since January, 1866, to the present time
365 there has been nothing deposited in the Farmers' Loan and Trust Company by the New Albany and Salem, or the Louisville, New Albany and Chicago Railroad Company, or by Williamson, or any other person, to pay the interest-warrants of the said railroad company;" do you mean by that answer to be understood as saying that no moneys derived from the earnings of that company's road have been deposited with the Farmers' Loan and Trust Company since Januury, 1866?

A. I do not.

Q. 5. Have any moneys derived from such earnings been deposited in said trust company since January, 1866, and, if any, state the amounts so deposited in gross, and why it has not been applied to the payment of interest-warrants on the bonded debt of the company?

(Objected to as not cross-examination, irrelevant, and as inquiring for the contents of books.)

A. I don't know where the moneys have been derived from. We have had an account with the Louisville, New Albany and Chicago Railway Company. I cannot state the amount deposited without reference to the books. I don't know why it has not been applied to the payment of interest-warrants on the bonded debt.

Q. 6. Have you access to the books kept in your office in respect to the business between the Farmers' Loan and Trust Company and the so-called Louisville, New Albany and Chicago Railroad Company?

A. Yes, sir.

(Question objected to on the same ground as stated in the last objection.)

Q. 7. By reference to those books would you be enabled to state the amount of money derived from the earnings of the road under the management of the railway company and deposited in the Farmers' Loan and Trust Company since January, 1866?

A. The books would not show that the money was derived from the earnings of the road, but would show the amount of money received and credited to the company.

Q. 8. State, if you can, who were the members of the board of directors of the said railway company during your business with it that were also members of the board of directors of the Farmers' Loan and Trust Company?

A. Don't know that I can.

Q. 9. Can you state, sir, who were the members of the board
366 of directors of the Farmers' Loan and Trust Company during the time of your business with said railway company?

A. Not without referring to our books.

Q. 10. I will get you, if you please, to refer to the books of the Farmers' Loan and Trust Company and ascertain, so as to state in your testimony the names of its directors in the years 1867, 1868, 1869, and 1870.

A. All the directors of the Louisville, New Albany & Chicago Railway Company were directors of the Farmers' Loan and Trust Company, except James F. Joy, George L. Schuyler, and William H. Bradford.

(This answer is accepted as an answer to the interrogatory No. 10.)

Q. 11. From the books of Farmers' Loan and Trust Company, relating to the dividends paid out to the shareholders of the railway company, would you be enabled to state the amount of capital in that company represented by the shares held by the directors of the railway company.

(Objected to on the same grounds as stated in the last objection.)

A. The dividend list would show the number of shares standing to the names of parties to whom dividends were paid.

Q. 12. Will it be convenient to refer to that list?

A. I presume I can find the book.

Q. 13. Please state the names and number of shares held by the directors?

A. John Jacob Astor	1000	shares.
William H. Bradford	1029	"
James H. Banker	1057½	"
Isaac Bell	460	"
James F. Joy	1000	"
Charles P. Leverick	135	"

Edward Minturn	660	"
R. G. Rolston	76	"
Frederick Schuchardt	987	"
John Seward	360	"
George L. Schulyer	1652	"
Moses Taylor	1552	"
George F. Talman	2655	"

The shares were one hundred dollars.

GEORGE P. FITCH.

367 Redirected:

Q. 14. Please prepare and append a list of all the stockholders of said company on October, 1870?

A. I will prepare and annex one. I herewith produce a list; the same is annexted to this, my deposition, and marked Ex. B, C, E. L. O., U. S. Com'r, April 11, 1872.

GEORGE P. FITCH.

Subscribed and sworn to before me April 11, 1872.

EDWARD L. OWEN,
United States Commissioner.

A.

The subscribed holders of the first-mortgage bonds of the Louisville, New Albany and Chicago Railroad Company, for the promotion of their mutual interest, agree to form an association under the following provisions:

Each subscriber to deposit with a committee of seven, hereinafter named, the bonds owned by them, respectively, and receive from such committee or its officer, a certificate of one share in such association for every 8 per cent. bond for $1,000 so deposited, and a certificate for one and a quarter shares for every ten per cent. bond for $1,000 so deposited.

The shares so issued to be transferable on the books of the association, to be provided by such committee, on the surrender of such certificates.

The said committee shall consist of Frederick Schuchardt, Moses Taylor, James H. Banker, Edward Minturn, George F. Talman, Charles P. Leverick, and John Steward.

The said committee shall have power to fill any vacancy in the committee, from death, resignation, or otherwise; to appoint a treasurer, and an agent to advise with the trustee of said railroad, and to take all measures that may become necessary hereafter to promote and secure the interest of the shareholders, provided that no assessment on the said shares shall be made without the consent of the respective shareholders.

This association may be dissolved and their bonds returned to the several depositors, upon the request in writing of depositors, to the amount of three-quarters of the whole deposited.

NEW YORK, *April* 16, 1867.

368 LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY.

Astor, J. J	1,000	shares
Amy, H. & Co	290	"
Andrews, Thomas F	120	"

	Astor, William	1,000	"
	Aspinwall, William H	745	"
	Ahrwieler, Leopold	12	"
	Bradford, William H	1,029	"
	Banker, J. H	1,057½	"
	Bell, Isaac	460	"
	Bill, Charles E	50	"
	Booth, Alfred	40	"
	Bominger Bros	60	"
	Breasted, Jno	30	"
	Bodmer, H., jr	100	"
	Beebe, Lydia	5	"
	Bellmont, A. & Co	30	"
	Baltzer & Taak	20	"
	Bridel, Mrs. Louisa	50	"
	Blanc, Miss Laura	20	"
	Bennett, Charles	5	"
	Bell, E. R	50	"
	Bell, Isaac E. R	40	"
	Boardman, Cornelia E	10	"
	Carpenter, Jacob S	107½	"
	Cutting, R. L	100	"
	Cary, W. F., executor of Henry Cary	25	"
	Cary, W. F	40	"
	Cutting, Walter L	93	"
	Cogswell, A. K	34	"
	Cogswell, A. K., trustee for Mrs. J. E. S. Wilson	33	"
	Churchill, F. H	20	"
	Chase, Isaac	12½	"
	Duncan, Alexander	325	"
	De Faud, Mrs. A. German	10	"
	Deniston, William	100	"
	Dutoit, Mr. De Malen	10	"
	Deumstorm, Thomas	40	"
	Drew, Daniel	775	"
369	Detmold, C. E	10	shares.
	Denney, Thomas	62	"
	De Lamertine, J. E. M	20	"
	De Neufville, Sebastian	25	"
	Edsall, Benjamin F	30	"
	Elliott, George T	10	"
	Eaton, Susan B	20	"
	Elmendorf, Jno. C., trustee	20	"
	Foster, Clara	10	"
	Foster, F. G	10	"
	Ferris, A. M. & Bro	62	"
	Foster, H. T. E	5	"
	Grier, Geo. M	20	"
	Gamble, Mrs. H. L., guardian Mary Hurst	5	"
	Gebhard, W. H	135	"
	Goettle, A. & Co., in trust	612½	"
	Gray, G. G., administrator	5	"
	Hoffman, Samuel V	100	"
	Hall, David F	20	"
	Hubbard, J. W. & Co	20	"

	Ingraham, D. P	30	"
	Iselin, A. & Co	25	"
	Jones, Elizabeth	20	"
	Jones, Edward's estate	100	"
	Jackson, Thomas C	50	"
	Jackson, Joseph W	20	"
	Jochmus, John	175	"
	Jones, Lewis C	10	"
	Jones, Walter's R. estate	10	"
	Johnson, Margaret Ann	30	"
	Joy, James F	1,000	"
	Jay & Co., in trust	10	"
	Kobbe, W. A	30	"
	Kirkpatrick, Andrew	17	"
	Kirkpatrick, John Bayard	16	"
	Leverick, Charles P	135	"
	Lamont, Ann	75	"
	Langdon, Walter	250	"
	Laight, Henry E., executor of M. E. L	160	"
	Lyon, Isaac	12	"
370	Lewis, W. H	100	shares.
	Liebenroth & Von Aued	12½	"
	Mapes, George	20	"
	Martin, George R	175	"
	Murry, A. S., pres't of Na'ional Bank, Orange Co	190	"
	Murry, A. S	225	"
	Murry, Edmond	10	"
	Minturn, Edward	660	"
	Moran Bros	1,500	"
	Moran, Thomas F	112½	"
	Mali, H. W. T., & Co	275	"
	Millard, Walter, in trust	30	"
	Milne, George	10	"
	Maguire, Dominick	22	"
	Mohr, J. F. W	10	"
	Mead, Amanda L	13	"
	Martland, Phelps & Co., in trust	70	"
	Nelson, Catharine B. and Jno. B. Hill, ex. of J. N	60	"
	Oelrichs & Co	40	"
	Orgill, Jos., in trust	60	"
	Penfold, Edmond, ex. of Jno. Penfold	100	"
	Probst, F. & Co., in trust	150	"
	Paff, Sophia F	10	"
	Pond, A. B. F	40	"
	Parsons, Reuben	63	"
	Pearson, E. D., trustee for G. A. Thornton's heirs	12½	"
	Polhemus, Mrs. Eliza B	50	"
	Porteous, Tho's	12	"
	Randolph, Israel	65	"
	Rowe, Peter	20	"
	Rolston, R. G	76	"
	Remsen, William	10	"
	Smith, Stephen	10	"
	Schermerhorn, W. C	50	"
	Sloan, Samuel	200	"
	Schuchardt, F. & Son	347	"

Schuchardt, Frederick, sr				640	"
Do.	do.	in trust		10	"
Do.	do.	in trust for C. F.		140	"
Do.	F. & Son, P. A. Schmidt			1,708½	"
371 Schuchardt, Frederick, sr.,	W. P. Shaeffer			58	"
Do.	do.	D. Dettenfells		35	"
Do.	do.	M. Blanc		15	"
Do.	do.	J. J. Bethram		50	"
Do.	do.	R. W. Gaetertz		50	"
Do.	do.	Schuchardt		105	"
Do.	do.	A. & L. Camphausen		250	"
Do.	do.	D. G. Roghi		5	"
Do.	do.	G. Schott		10	"
Do.	do.	Gronertt & Co		50	"
Sayer, George H				10	"
Snedacer, Obadiah				30	"
Steward, John				360	"
Swan, Ja's S				70	"
Snedan, G. W				40	"
Sidney, George				70	"
Snedan, John				75	"
Savage, Benjamin				20	"
Smith, W. Mitchell				10	"
Schellinz, Dr. Josephus				20	"
Schuyler, Geo. L				1,652	"
Suydam, James				20	"
Stursberg & Co				95	"
Suydam, Admanna				20	"
Talman, Geo. F., trustee				135	"
Taylor, Moses				1,552	"
Trinity College trustees				70	"
Thompson, William G				45	"
Thompson, Charles H				40	"
Tappan, John S				5	"
Towner, Samuel				30	"
Talman, George F				2,655	"
Van Nest, A. R				30	"
Von Hoffman, L. & Co				235	"
Vinton, Rev. Francis, D. D				10	"
Williams, Cha's				140	"
Wells, Jonathan F				640	"
Wright, D. B				20	"
Waring, Fanny M				215	"
Whetmore, W. M				10	"
372 Whitewright, W'm, jr				139½	sh'res.
Williams, A. J., trustee for Isaac Williams' heirs				12½	"
Williams, Tho's C., trustee for Vinson Williams' heirs.				12½	"
Zabriski, George J. N., in trust				10	"
				29,112½	

Exhibit A.

E. L. OWENS, *U. S. Com'r.*

APRIL 11TH, 1872.

REC. 428—17

I certify the foregoing list to be a correct list of the stockholders of the Louisville, New Albany, & Chicago Railroad Company this p. m.

W. D. SEARLES, *T. C.*

Deposition of William H. Lewis.—Filed February 29th, 1872.

The deposition of William H. Lewis, taken in an action pending in the circuit court of the United States for the district of Indiana, wherein Charles E. Bill is the complainant, and The Louisville, New Albany and Chicago Railroad Company and others are the defendants, for said complainant, at the time and place hereinafter named, before me, John H. Stotsenburg, notary public, the said Stotsenberg being selected as notary public and at request of defendant's counsel.

WILLIAM H. LEWIS, of the city of New Albany, county of Floyd, and State of Indiana, of lawful age, being first duly sworn, deposes as follows:

Question 1. State your name, age, and residence.

Answer. My name is William H. Lewis; I am thirty-five years old; and reside in New Albany, Indiana.

Q. 2. Do you know the parties to this suit?

A. I know the complainant; I know also Gideon Putnam and Stella A. Putnam, his wife, of the intervening defendants; and the railroad company also; but I do not know the other defendants.

Q. 3. In what business or occupation have you been engaged since the year 1857 up to December, 1870, and at what place?

A. I was, from October 1st, 1858, up to October 1st, 1868, the cashier and agent of Douw D. Williamson, trustee of the Louisville, New Albany and Chicago Railroad Company, and acted continuously as such up to the time the road went into the hands of the receiver, Joy, and then I acted as cashier and agent of said Joy, the receiver, con-
373 tinuously up to June 10th, 1869, and after that I acted as secretary and treasurer of the Louisville, New Albany and Chicago Railroad Company until the 31st of December, 1870. In all these times at the general office of the company at New Albany, Indiana.

The hour of adjournment being near, and being unable to finish the deposition on account of the lateness of the hour, the further taking of this deposition is adjourned by me, by consent of parties, until Saturday, December 30th, 1871, at the same place and between the same hours.

JOHN H. STOTSENBURG,
Notary Public.

And now, on Saturday, December 30th, 1871, at the same place and between the same hours, came the parties and the said W'm H. Lewis; and thereupon the examination of said Lewis was resumed.

Q. 4. State, as near as you can, the time when the said railroad went into the hands of the receiver, Joy.

A. Mr. Joy took possession of the road on October 1st, 1868, according to my recollection.

The hour of adjournment being near, and being unable to finish this deposition on account of the hour, the further taking of this deposition is adjourned by me, by consent of parties, until Monday, January 1st, 1872, (on account of the intervening Sunday,) at the same place and between the same hours.

JOHN H. STOTSENBURG,
Notary Public.

And now, on Monday, January 1, 1872, at the same place and between the same hours, come the parties and the said William H. Lewis; and thereupon the examination of the said Lewis was resumed.

Q. 5. How long did Mr. Joy remain in possession of said railroad as receiver of the White common pleas court.

A. From October 1, 1868, until June 10, 1869.

The hour of adjournment being near, and being unable to finish this deposition on account of the lateness of the hour, the further taking of this deposition is adjourned by me, by consent of parties, until Tuesday, January 2, 1872, at the same place and between the same hours.

And now, on Tuesday, January 2, A. D. 1872, at the same place and between the same hours, come the parties and the said William H. Lewis; and thereupon the examination of said Lewis was resumed.

374 Q. 6. Who, during the time the said Williamson had possession of the road, received and disbursed all revenues derived from the operation of said railroad?

A. I did.

The hour of adjournment being near, and being unable to finish the deposition on account of the lateness of the hour, the further taking of this deposition is adjourned by me, by consent of parties, until Wednesday, January 3, 1872, at the same place and between the same hours.

And now, on Wednesday, January 3, A. D. 1872, at the same place and between the said hours, come the parties and the said William H. Lewis; and thereupon the examination of the said Lewis was resumed.

Q. 7. State the time when Douw D. Williamson took possession of the said railroad and had charge of the operation thereof; how long and at what date his actual possession ceased.

A. On October 1, 1858; and had possession for ten years, until October 1, 1868. It ceased on October 1, 1868.

Q. 8. At what place were the coupons or the 10 per cent. and 8 per cent. mortgage bonds issued by the New Albany and Salem Railroad Company made payable?

A. At the office of the Farmers' Loan and Trust Company, New York.

Q. 9. Were any coupons at any time paid save at the office of the Farmers' Loan and Trust Company, to your knowledge?

A. No, sir; not to my knowledge.

Q. 10. In the year 1858, 1859, 1860, 1861, 1862, and 1863, how much money, if any, was paid by the said Williamson, or any one in his behalf, by way of interest upon the ten per cent. and eight per cent. bonds of said railroad company?

A. Nothing was paid.

Q. 11. State the reason for such non-payment.

A. The property hadn't earned money sufficient to pay a coupon over and above its running expenses, and the payment of the principal and interest of its trust loan of $200,000.

Q. 12. State, if you know, how much, if anything, was paid in the year 1864 by way of interest upon the said ten per cent. and eight per cent. bonds.

375 A. The sum of $25,000, being the amount represented by one coupon, was paid on the ten per cent. bonds, and the sum of $93,000, being the amount represented by one coupon, was paid on the eight per cent. bonds during that year.

Q. 13. State how much by way of interest upon the said bonds was paid during the year 1865?

A. The sum of $50,000 was paid on the ten per cent. bonds, and the sum of $186,000 was paid on the eight per cent. bonds during that year.

Q. 14. How much was paid by way of like interest on said bonds during the year 1866?

A. The sum of $26,250 was paid on the ten per cent. bonds, and the sum of $97,650 was paid on the eight per cent. bonds during that year.

Q. 15. Since the payment last mentioned by you, continuously until June, 1869, how much was paid by way of interest on the said bonds?

A. There was nothing paid with the exception of fifty dollars, which was paid on the coupons of one ten per cent. bond which had not been presented when the corresponding coupons of the other bonds were paid.

Q. 16. Give the detail of the method adopted by the said Williamson and his agents in making payment of the said coupons.

A. The money necessary for the payment was placed in the hands of the Farmers' Loan and Trust Company of New York, and the coupons paid them by the said company upon presentation.

Q. 17. Except the sums which you have alone testified to, state how much the said Williamson, or any one in his behalf, at any time, deposited at the Farmers' Loan and Trust Company for payment on interest-warrants of the said 8 per cent. and 10 per cent. bonds.

A. Nothing by him, or by any one for him, for that purpose.

Q. 18. Why were no payments made by way of interest on such bonds in the years 1867, 1868, and 1869?

A. Because there was not sufficient money for paying one coupon after the running expenses and the revenues of the road had been paid.

Q. 19. State where, during the period from October, 1858, continuously, until December, 1870, the principal office of said company was situate?

A. At New Albany, Indiana.

Q. 20. State whether the agents of said Williamson, charged
376 with the personal operation of the said line of road, did or did not, during the period of his management thereof, state the receipts and disbursements of said road on any books of account, or take vouchers or acquittances to evidence the disbursements.

A. They did state the receipts and the disbursements on books of account, and took vouchers and acquittances as evidences of the disbursements.

Q. 21. Where have those books and vouchers been kept, and where are they now?

A. They have been kept in the office at New Albany, and they are there now, to the best of my knowledge.

Q. 22. Except books and vouchers which you have just spoken of, state whether the said Williamson kept any book of account, to your knowledge, showing the receipts and expenditures of the said railroad.

A. He did not.

Q. 23. How many of the bonds, eight or ten per cent. bonds have been paid since 1858?

A. None, with the exception of fourteen thousand dollars on account of the eight per cent. bonds, have been paid in full.

Q. 24. When were they paid?

A. In the year 1868.

The hour of adjournment being near, and being unable to finish this deposition on account of the lateness of the hour, the further taking of this deposition is adjourned by me, by consent of the parties, until Thursday, January 4th, 1872, at the same place and between the same hour.

And now, on Thursday January 4th, 1872, at the same place and between the same hours, came the parties and the said William H. Lewis; and thereupon the examination of the said Lewis was resumed.

Q. 25. How many mortgage bonds of the series of February 8, 1851, commonly called the ten per cent. bonds of the said railroad, are now outstanding?

A. Five hundred of them of $1,000 each.

The hour of adjournment being near, and being unable to finish this deposition on account of the lateness of the hour, the further taking of this deposition is adjourned by me, by consent of parties, until Friday, January 5th, 1872, at the same place and between the same hours.

377 And now, on Friday, January 5th, 1872, at the same place and between the same hours, came the parties and the said William H. Lewis, and thereupon the examination of the said Lewis was resumed.

Q. How many of the eight per cent. mortgage bonds of said road are outstanding?

A. Two million three hundred and eleven thousand dollars of them.

Q. 27. At what time was the trust-loan of $200,000, made by said Williamson, finally paid?

A. In 1864.

Q. 28. From the month of October, 1858, continuously, to December, 1870, state, as near as you can, what was the average total earnings of the said road per year.

A. I should say $600,000 or $650,000.

Q. 29. In April, 1864, state what the condition of the ten per cent. and eight per cent. mortgage bonds was, as to whether interest had been paid up on them, or was in arrears.

A. No interest had been paid on them up to that date.

Q. 30. About what amount of interest was in arrear, on the said two dates, of mortgage bonds at that date?

A. About $1,304,000.

Q. 31. In the years from 1865 until 1868, state what the relative earnings and expenditures of the said road were.

A. To the best of my recollection the expenses exceeded the earnings during that time.

Q. 32. State the amount of money paid by said Williamson for the earnings of said road, by way of or account of subscription to the Michigan City Harbor Company.

A. Thirty thousand dollars, about. I think it was twenty-nine thousand seven hundred dollars.

Q. 33. State, as near as you can, the amount of past-due interest upon the said ten per cent. and eight per cent bonds.

A. With the interest on the interest it is not very far from four million dollars. It is as much as that.

Q. State whether or not the entire line of railroad and all its appurtenances is or is not an adequate security to respond to the said amount of unpaid interest.

A. It is not adequate to respond to more than half of it, certainly.

378 Q. 35. State what the present condition of said railroad property is, including in such statement the condition of its track, superstructure, number and condition of rolling-stock, etc.

A. I cannot state what its present condition is, as I don't know.

Q. 36. State what is your opinion as to present value of the said railroad, including its entire equipment, rolling-stock, and machinery in use?

A. I should think not over $2,000,000.

Q. 37. Can you state from what source the entire equipment, rolling-stock, and machinery of said railroad has been purchased since 1858?

A. The equipment, rolling-stock, and machinery principally, has been purchased and virtually rebuilt since 1858 out of the earnings of the road.

The complainant here rested. By consent of parties the further taking of these depositions is adjourned to the same place, and to Wednesday, January 10th, 1872, at 2 o'clock p. m.

And on Wednesday, January 10, 1872, the further taking of these depositions was adjourned, by consent, to Wednesday, January 30, 1872, at the same place, and between the same hours.

Cross-examined by Judge Huff for the intervenors:

Question. At whose instance were you employed as the cashier and agent of Douw D. Williamson, trustee?

Answer. At the instance of no one, so far as I know of. I was employed by Mr. Williamson.

Q. 2. What office, if any, did said Williamson hold in the Farmers' Loan and Trust Company in the city of New York, at the time of your employment?

A. He was president of that company.

Q. 3. At that time what amount, if any, of the ten and eight per cent. bonds were held in that company, that is the Farmers' Loan and Trust Company?

A. I do not know.

Q. 4. Can you state who were the holders of any of the ten and eight per cent. bonds at that time?

A. I cannot.

(Objected to as immaterial.)

Q. 5. You say that in the year 1864 the sum of $25,000 being the amount represented by one coupon, was paid on the ten per cent.

379 bonds, and sum of $93,000 being the amount represented by one coupon, was paid on the eight per cent. bonds during that year. Were any vouchers for those payments taken and returned to the office of the company at New Albany?

A. I think that the coupons paid were returned to the office at New Albany.

Q. 6. In what manner were those payments made by the company, and through what agency?

A. The Farmers' Loan and Trust Company, of New York, were the transfer agents of the company, and the money *of* the payment of the coupons was remitted to them, the coupons being payable at the office.

Q. 7. Was it not your habit, while acting as the cashier and agent under Williamson, to remit all the money derived from the earnings of

the road over and above running expenses, betterments, and repairs, to the Farmers' Loan and Trust Company, of New York?

A. Mr. Willaimson kept an account with the Farmers' Loan and Trust Company as trustee. I remitted such moneys to that company to be placed to the credit of his account as trustee.

Q. 8. Were the vouchers for the payment of coupons, in the year 1865, as testified by you above, returned to the office in the same manner as for the payments made in 1864?

A. I think they were.

Q. 9. You state, in answer to the 58th interrogatory, that the trust loan of $200,000 made by the said Williamson was fully paid in the year 1864; had not means been provided and placed in Mr. Williamson's hands prior to that time, with which to make the full payment of that trust loan?

(Objected to as immaterial.)

A. No, sir.

Q. 10. Who was the superintendent of the road during the year 1864, and for some time prior to that year?

A. A. B. Culver.

Q. 11. I see that you state that $14,000 of the eight per cent. bonds were paid in fall 1868; under what arrangement was the principal of these bonds paid at that time, and to whom was the payment made?

A. I don't know. The bonds were in the market, I believe, so far as I know.

Q. 12. Were they bought with the funds of the company for cancelation?

380 A. They were bought with the cash proceeds of the sale of the Gosport branch.

Q. 13. Was not that sale of the Gosport branch a mere exchange of the railroad property for that fourteen bonds and 50 shares of stock of the Indianapolis and Vincennes Railroad Company?

(Objected to as immaterial.)

A. It was not.

Q. 14. How *are of the parts* with respect to the payment and cancelation of the 14 eight per cent. bonds known to you?

A. They were reported to me by Mr. Williamson, and are also shown in his account as trustee with the Farmers' Loan & Trust Company.

Q. 15. Was that report contained in any writing that is preserved in the office of that company?

A. I think it was merely a verbal statement.

Q. 16. Was the application of the money derived from the sale of the Gosport branch, to the payment of the fourteen 8 per cent. bonds made simultaneously with the sale of the Gosport branch?

A. I think it was not.

Q. 17. Does it occur to you, now, how the amount of the proceeds of that sale of the Gosport branch appear *to* the books of the company?

(Objected to as immaterial, because the books will show for themselves.)

A. The total amount received was placed to the credit of construction-account.

Q. 18. And how was the account as to the fifty shares of stock stated on the books of the company?

(Objected to as immaterial, because there is better evidence.)

A. The transaction in full is spread upon the books of the company, and the fifty shares of stock appear as assets of the company.

Q. 19. You say in answer to third inter'ogatory-in-chief, that after

June 10, 1869, you acted as Secretary and Treasurer of the Louisville, New Albany and Chicago Railroad Company until the 31st December, 1870; under what individual's immediate direction did you act at that time.

(Objected to as immaterial and irrelevant.)

381 A. Under that of the board of directors; I don't remember all the names, principally under that of G. S. Schuyler, as president of the board.

Q. 20. Who was the agent of the holders of the eight and ten per cent. bonds, in constructing the proceedings in the state limit, under which the railroad company claimed to have engaged?

(Objected to as immaterial.)

A. I do not know that there was any such agent.

Q. 21. You entered upon your duties for the railroad company on June 10, 1869. How soon after that did you meet with George L. Schuyler, and where did you meet with him?

A. I no not remember how soon; I think it was in New Albany.

Q. 22. When you met him in New Albany, was he accompanied by any other person; if so, by whom?

A. I think that he was not.

Q. 23. During your employment as secretary and treasurer of the railroad company from June 10, 1869, to December 31, 1870, to what business did that employment relate?

A. It related to the duties of those offices. I kept the books and accounts of the company, and received and disbursed moneys.

Q. 24. From what *sum* were the moneys so received and disbursed derived?

A. From the earnings of said road.

Q. 25. What road was it?

A. The road purchased at the sale in White County, in 1869, and known formerly as the Louisville, New Albany and Chicago Railroad Company.

Q. 26. To whom were your accounts, stated from June 10, 1869 to December 31, 1870, and what disposition was made of the moneys derived from the business of the road during that period in excess of the ordinary disbursements?

A. The accounts were stated monthly to the board of directors through the president; about thirty thousand dollars of the amount was expended in building the road from the depot in New Albany to the intersection of Main and Vincennes streets in that city; about ninety thousand dollars ($90,000,) was paid to the stockholders as a dividend; between $5,000 and $6,000 was handed to G. H. Chapman, receiver, and the remainder was deposited with the Farmers' Loan and Trust Company of New York.

382 Q. 27. What was the exact amount of the remainder so deposited?

A. I do not remember, but is shown by the books of the company.

Q. 28 About what time was the last deposit made of such remainder.

A. About the 12th of December, 1870.

Q. 29. Were vouchers taken for the $90,000 distributed as dividends to the stockholders?

A. I presume they were. The money was paid by the transfer agency in New York.

Q. 30. Were no such vouchers *were* forwarded to you as the secretary and treasurer, and put on file in the office of th*h* company?

A. The receipts were taken, I presume, in a dividend-book, as is usual

in such cases, and the book was kept at the office of said transfer agency, and the receipts of said transfer agency are filed for such payment in the office of the company at New Albany.

Q. 31. Are these receipts in gross, or are they the separate receipts of the several stockholders? I mean the receipts forwarded to this office by the transfer agency.

A. They are in gross.

Q. 32. Would they, if produced without reference to the dividend-book you refer to, disclose the names of the stockholders who received such dividends?

A. They would not.

Q. 33. What amount of capital stock was represented by the stockholders of the railway company in the aggregate?

A. About $3,000,000.

Q. 34. How was that stock paid into the company?

(Objected to as immaterial.)

A. It represented the railroad property.

Q. 35. Was any of derived by the stockholders, by the surrender of 10 per cent. and 8 per cent. bonds of the New Albany & Salem Railroad Company, and their conversion into the stock of the railroad company?

(Objected to as immaterial.)

A. I do not understand that any of the said bonds were surrendered to the railroad company, or that they were converted by the railroad company into their stock and thereby canceled.

383 Q. 36. Was any dividend upon the stock of the railroad company paid to any holder thereof through your instrumentality under the direction of the transfer agency in New York?

A. There was.

Q. 37. Can you state to whom?

A. The transfer agency paid a dividend to Isaac Chase, of Salem, and to several parties at Bedford, through me.

Q. 38. How did those parties derive this stock?

(Objected to as immaterial.)

A. The stock was issued to them, as I understand it, upon the eight and ten per cent. bonds held by them.

Q. 39. What was done with the bonds that formed the basis of that stock?

A. They were delivered to the clerk of the White common pleas court.

Q. 40. How do you ascertain that they were so delivered?

A. I sent them to him through Messrs. Chase and Wilstach, of Lafayette.

Q. 41. Please identify the letter-book now produced; what book is it, by whom kept, for what use?

A. It is an impression taken from letters sent by me from June 12th, 1869, to June 10th, 1870, as secretary and treasurer of the railroad company.

Q. 42. Turn to the impression of the letter beginning on page 23 and ending on page 24, and state in whose handwriting it appears to have been written.

(Objected to as immaterial.)

A. This is my handwriting.

Q. 43. Make a copy of the impression of that letter as an exhibit to your answer to this question, and state upon what information was it that you communicated to Mr. Malott, to whom that letter is addressed,

the fact that the gentlemen who purchased our road at the recent sale, and who were large bondholders, have engaged a new company, which is now operating the property, and that they have paid the capital stock at $3,000,000, and have converted their bonds into it at the rate of $1.20 for the 10 per cent. and for the 8 per cents.

(Objected to because letter not produced or shown to exist, and that testimony is irrelevant and incompetent, and merely copy of a copy.)

384 A. The following is a copy:

JUNE 13TH, 1869.

Mr. MALOTT, Esq., *Bedford, Ind.*

DEAR SIR: The gentlemen who purchased our road at the recent sale, and who were large bondholders, have organized a new company, which is now operating the property. They have fixed the capital stock at $3,000,000, and have converted their bonds into it at the rate of $1.20 for the ten per cent. and par for the eight per cents. They extend the same privilege to other holders who may accept it before August 1st, 1869. After that date, bonds remaining out will be worth only their proportion of a $100,000, the amount for which the road was sold. If you wish to convert your bonds into stock in the new company, you can forward them to us, and I will send them with others to New York, where the new stock will be issued.

Yours, respectfully,

W. H. LEWIS, *Secretary.*

It was from consultation with Mr. George L. Schuyler as near as I can recollect. I should, perhaps, have used the word "exchange" for "converted." Further, I do not understand that any of the bonds were at any time surrendered to the railway company, there being nothing on the books of the company here or on New York to show any such surrender or conversion.

Q. 44. At about what time were the bonds, which your correspondence with Malott relates to, sent the clerk of the White common pleas court through Charles Wilstach?

A. I do not remember.

Q. 45. On page 34 of the letter-book referred to, there appears the following copy of a letter:

JULY 24TH, 1869.

M. A. MALOTT, Esq., *Bedford, Ind.*

DEAR SIR: Your favor of the 23d inst. ordering ten per cent. bonds Nos. 264, 266 and 270, is received. The stock will be issued in New York at an early day, the certificates forwarded.

Yours, respectfully,

W. H. LEWIS, *Secretary.*

In conformity with the promise in that letter, did you procure the stock to be issued in New York in lieu of those bonds?

385 (Objected to as leading, and because original letter is not produced as immaterial.)

A. I sent the bond to the president of the Farmers' Loan and Trust Company, and he delivered them to the bondholders' association, and I presume stock was issued and sent to me for delivery.

Q. 46. The letter also copied from page 34 appears to be in your handwriting, does it not?

A. That is my writing.

Q. 47. In whose handwriting is the following letter found on page 65 of the letter-book referred to?

(Objected to.)

A. It is mine, and reads as follows:

AUGUST 2D, 1869.

M. A. MALOTT, Esq., *Bedford, Ind.*

DEAR SIR: Enclosed I hand you certificates of stock in this company, as below:

No. 100,	A. J. Williams, trustee	12 shares.
No. 5,	A. J. Williams, trustee	$50
No. 101,	T. C. Williams, trustee	12 shares.
No. 16,	T. C. Williams, trustee	$50 script.
No. 102,	E. D. Pearson, trustee	12 shares.
No. 17,	E. D. Pearson, trustee	$50 script.

As you will notice, $125 in stock has been issued for each $100 in bonds surrendered, which we think a very favorable arrangement for the holders. Please acknowledge the receipt of the certificates.

Yours, truly,

W. H. LEWIS, *Secretary.*

Q. 48. Look at the two instruments now placed in your hands and mark them as exhibits in your answer to this interrogatory, and state whether the instrument numbered 102 is a certificate of stock referred to in the letter copied on page 66 of the letter-book, and also whether the instrument numbered 17 is one of the instruments referred to in that letter.

(Objected to as immaterial.)

A. I have looked at them, and now mark them "A" and "B," and make them a part of my answer. They are the papers referred to in said letter-book.

386 Q. 49. What do the two exhibits accompanying your last answer represent and stand in lieu of?

(Objected to.)

A. They represent full shares fractional stock with Louisville, New Albany & Chicago Railway Company. I don't know what you mean by the words "standing in lieu of."

Q. 50. Were not those two papers made exhibits with owner 48 forwarded to Mr. Malott in exchange for a ten per cent. bond of $1,000.

A. Yes; I suppose they were.

Q. 51. State, if you know, how many of the ten per cent. and eight per cent. bonds were treated as the bonds enclosed to you by Mr. Malott?

(Objected to as immaterial.)

A. I do not know.

Q. 52. In your answer to the 25th interrogatory-in-chief, you state that five hundred of the mortgage bonds of the series of February 8th, 1851, commonly called the ten per cent. bonds of the said railroad, are now outstanding, and in your answer to the 25th interrogatory-in-chief, you state that $2,311,000 of the eight per cent. mortgage bonds are outstanding; do you include in these statements the bonds referred to that have been treated as were those bonds forwarded by you to Mr. Malott?

A. (Objected to as embodying a material fact, and immaterial.

A. Yes; it includes all.

Direct examination renewed:

Q. 1. In your answer to the 38th cross-interrogatory, as to how the parties derived their stock, you say that the stock was issued on the basis of the eight per cent. bonds held by them; please explain what you mean by that?

(Objected to and exception taken.)

A. The road was sold by decree of the White common pleas court and bought by Schuyler for the association of the bondholders for $100,000. A company was formed called the Railway Company, with a capital of three million dollars, and the stock given to bondholders of the eight and ten per cents. in proportion to the amount of bonds held by them.

Q. How was it as to the Malott bonds, and all others not included in those held by the bondholders' association. Was any other or different arrangements made as theirs?

387 (Objected to and exceptions taken.)

A. They were allowed the same privilege after the bonds were surrendered to the White common pleas court in the same manner. I mean nothing more than that they had the same privilege with the other holders of the eight and ten per cent. bonds. The bonds were placed in the custody of the White common pleas court upon the supposition that the sale was valid.

W. H. LEWIS.

A.—This is the "Exhibit A" referred to by witness Lewis, and made a part of his 48th answer.

JOHN H. STOTSENBURG,
Notary Public.

No. 102.] Shares $100 each. [12 shares.

THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILROAD COMPANY.

OFFICE OF THE FARMERS' LOAN AND TRUST COMPANY,
TRANSFER AGENTS IN NEW YORK.

By virtue of warrant to this agency, we hereby certify that E. D. Pearson, trustee for G. A. Thomas' heirs, Bedford, Indiana, is entitled to twelve shares in the capital stock of the Louisville, New Albany and Chicago Railway Company, transferable only on the books at the transfer office, in the city of New York, in person or by attorney, upon the surrender of this certificate.

In witness whereof we, the Farmers' Loan and Trust Company, by our president and secretary, have hereunto affixed our signatures, at New York, this 29th day of July, 1869.

R. J. ROLSTON, *Pres't.*

GEO. P. FITCH, *Sec'y.*

B.—This is Exhibit B referred to by witness Lewis, and made a part of his 48th answer.

Fractional certificate.

THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY.

OFFICE OF FARMERS' LOAN AND TRUST COMPANY,
TRANSFER AGENTS,
New York, July 29, 1869.

This is to certify that E. D. Pearson, trustee for G. A. Thornton's heirs, is entitled to a fractional part of a share of stock in this company, amounting to fifty dollars.

Upon the surrender of this certificate at this office, with others of like tenor, amounting in the aggregate to one hundred dollars, a share of stock will be issued therefor.

R. G. ROLSTON, *Pres't.*

388 *Depositions of George F. Talman, George D. Schuyler, and George P. Fitch.—Filed April 16th, 1872.*

Deposition of Hiram W. Chase.—Filed September 9, 1872.

Deposition of Hiram W. Chase, a witness in a certain action now pending in the circuit court of the United States for the district of Indiana, wherein Charles E. Bill, trustee, &c., is plaintiff, and the Louisville, New Albany and Chicago Railroad Company and others are defendants, taken before me in pursuance to the annexed notice, at the time and place in my certificate hereinafter named, to be used as evidence of the part of John S. Shaw, an intervening defendant, and other intervening defendants in said action.

The said HIRAM W. CHASE, a competent witness, being duly sworn, according to law, to testify the truth, the whole truth, and nothing but the truth, in said cause, testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is Hiram W. Chase; age, 48 years; residence at Lafayette, Indiana, and by occupation an attorney at law.

Q. 2. What, if any, relation have you sustained to the corporation known as the New Albany and Salem Railroad Company, and the Louisville, New Albany and Chicago Railroad Company. State when such relation commenced and when it terminated.

A. From about the 15th day of June, 1852, to some time in the year 1859 or 1860 the firm of Chase and Wilstach, attorneys at law at Lafayette, Indiana, of which firm I was a member, were the attorneys of the New Albany and Salem Railroad Company. About the time last mentioned the name of the corporation was changed to that of the Louisville, New Albany and Chicago Railroad Company, and the firm of Chase & Wilstach continued to act as its attorneys. The firm of Chase & Wilstach attended to the business of this corporation under its different names in Tippecanoe County, and the counties immediately adjoining. The principal business done by Chase & Wilstach for the railroad company originated in Tippecanoe County, but we attended to some business in Montgomery, Clinton, White, Pulaski, and Jasper Counties. Though we gave some advice about matters connected with business in other counties on the line of the road, we also gave a little attention to one or two patent-right cases in the United States circuit court
389 for the district of Indiana, where suit had been brought for alleged infringements by the company of patent brakes. These suits, however, were compromised. The firm of Chase & Wilstach continued to act as attorneys for the railroad company, and for Mr. Douw D. Williamson, trustee, who managed the affairs of the railroad under the name of the Louisville, New Albany & Chicago Railroad Company, until shortly before the institution of a suit in the White common pleas court in the name of Duow D. Williamson, plaintiff, against the Louisville, New Albany and Chicago Railroad Company and others, for the foreclosure of five several trust-deeds or mortgages upon which a decree was rendered and the road sold. The firm of Chase & Wilstach ceased to act as attorneys for the railroad company upon or shortly before the institution of said suit in the White common pleas court. I do not think

the firm of Chase & Wilstach was ever appointed or employed as attorneys by a formal order of the board of directors of the said New Albany and Salem Railroad Company, or the Louisville, New Albany and Chicago Railroad Company, but we acted as such attorneys at the request of James Brooks, president; also of David A. Noble, president, and of Mr. Williamson, trustee, who run and operated the railroad in the name of the Louisville, New Albany and Chicago Railroad Company.

Q. 3. What, if any, relation did you sustain to Douw D. Williamson in his business as trustee, under the decree of the circuit court of the United States for the district of Indiana, of December, 1858, in the cause in chancery therein pending, in which said Williamson, as trustee and complainant, and the said New Albany and Salem Railroad Company and others were defendants? If any such relation, state when it commenced and when it terminated.

A. The firm of Chase & Wil*tash* never acted as the attorneys or counsellors of Mr. Williamson in the suit mentioned in the United States circuit court, wherein the decree was rendered, in December, 1858, but said firm of Chase & Wilstach did act as attorneys for Mr. Williamson while he was operating and managing the railroad, by virtue of the possession which he took under that decree, up to about the time of the institution of the suit in White County for the foreclosure of the mortgages.

Q. 4. What, if any, relation did you sustain, at that time, to Douw D. Williamson, as trustee, under the several trust-deeds executed by the said railroad company to secure its bonds?

390 A. The firm of Chase & Wilstach acted as the attorneys of Mr. Williamson in all business regarding professional services in the county of Tippecanoe, and in such cases as we were specially employed in in other counties growing out of or connected with Mr. Williamson's running or operating the railroad as trustee, or by virtue of the possession obtained, under the decree of the United States circuit court, rendered in 1858, up to about the institution of the suit instituted in White County. In the summer of 1868 Mr. Williamson employed Henry Crawford, esq., then a practicing attorney of White County, Indiana, now of Chicago, and the firm of Chase & Wilstach, to bring a suit to foreclose five several mortgages or trust-deeds made by the New Albany and Salem Railroad Company against said company and others, which suit was brought by said Crawford and Chase & Wilstach as attorneys for the plaintiff Williamson in the White common pleas court, and prosecuted to final judgment.

Q. 5. About what time were you first employed by Douw D. Williamson to prosecute the suit to foreclose the said trust-deeds in the common pleas court of White County, Indiana?

A. The employment in the suit, which was commenced in the name of Mr. Williamson, was, according to the best of my recollection, a very few days before the suit was commenced, probably not to exceed a week or ten days; but Chase & Wilstash had been directed some month or two before that to prepare a cross-complaint for the purpose of foreclosing the mortgages or trust-deeds, in a suit brought by one Henry H. Horner in the White common pleas court by said Crawford, as his attorney, wherein the plaintiff sought to have a receiver appointed, and the railroad and its appurtenances taken from the possession of Mr. Williamson. The Horner suit was compromised, and said Crawford and Chase & Wilstach were employed to institute and prosecute the suit in White County above mentioned.

Q. 6. Were you so employed by said Williamson in person? If not n person, state through what agency you were employed?

A. I received instructions from Mr. Williamson in person, according to the best of my recollection, in the city of New York, to file the cross-complaint in the Horner case to foreclose the mortgages, and prepared one accordingly. Upon the compromise of that suit the employment to institute a separate suit to foreclose the mortgages came from
391 Mr. Williamson through George L. Schuyler, of New York, who was acting as the assistant and agent of Mr. Williamson, who was then old and infirm. Mr. James F. Joy, of Detroit, after the compromise of the Horner suit, spoke to me, suggesting that I should act in connection with Mr. Crawford in the foreclosure of the mortgages. Mr. George F. Talman, of the city of New York, a holder of several of the first-mortgage bonds, also conferred with me in reference to assisting Mr. Crawford in the foreclosure of the mortgages.

Q. 7. How many interviews had you with Mr. James F. Joy in reference to the institution of the suit to foreclose the mortgages in the White common pleas court?

A. I recollect of but one, and that was immediately upon the dismissal of the Horner suit.

Q. 8. About what time was it determined that a suit to foreclose said trust-deeds should be commenced in the State courts? Who united in such determination, and what place were the conferences held, if any, which led to such determination? Please state in answer to this question the entire history of the circumstances that led to the bringing of the suit in the White common pleas court.

Adjourned until to-morrow, August 24th, 1872, at 10 o'clock a. m., at the same place.

On the 24th day of August, 1872, at 10 o'clock a. m., the taking of this deposition is renewed.

Answer to question 8. So far as I know, it was determined to bring the suit to foreclosure the trust-deeds or mortgages made by the New Albany and Salem Railroad Company to Douw D. Williamson, as trustee, in the White common pleas court, about the first or second day of September, 1868. My understanding at the time was that Mr. Henry Crawford and Chase and Wilstach were employed to foreclose the trust-deeds or mortgages, and that the court in which it was to be done was left to their selection; at least I knew of no instruction from Mr. Williamson, or any one acting for him, as to what court we should proceed in. The only place where any conference was held, to my knowledge, upon the subject of the selection of the court in which the suit was to be instituted and carried on, was the library of Mr. Henry Crawford, at his then residence, near Brookston, White County, Indiana, about the first or second of September, 1868, and the only persons present at the conference were Mr. Crawford and myself. The history
392 of the circumstances that led to the bringing of the suit in the White common pleas court, so far as I know the same, is this: The New Albany and Salem Railroad Company, afterwards called the Louisville, New Albany and Chicago Railroad Company, had been run and operated by and under the direction of Mr. Williamson, in the name of the railroad company, under the possession taken by him, pursuant to the decree of the United States circuit court of 1858, for nearly ten years. The business was not profitable, and it was difficult to keep the road and its equipment up in good order. In the summer of 1864 a contract was said to have been entered into by Mr. Martin, then acting as superintendent, with Phineas M. Kent, Henry Crawford, and

Bela C. Kent, for the transportation of a large lot of cattle, some fifteen hundred, if I remember correctly, from White County to New Albany, for army use. The company was unable to provide cars in time to ship the cattle, and Kent, Crawford and Kent claimed that in consequence they were unable to put the cattle in on their contracts, and brought suit for the alleged damages, which resulted in a verdict and judgment in the White common pleas court in their favor, in the early part of 1867, for $45,737.45. Some time after that a suit was commenced in said White common pleas court by one Henry H. Homer, of whom Henry Crawford was the attorney, against the New Albany and Salem Railroad Company, by its then corporate name, to which Mr. Williamson was subsequently made a party, upon a thousand-dollar bond made by said New Albany and Salem Railroad Company, February 1st, 1855, as I remember, and secured by the mortgage or trust-deed of that date, for the purpose of getting a receiver appointed, and taking the railroad and its appurtenances out of Mr. Williamson's hands, and for a foreclosure of the mortgage and general relief.

James F. Joy, esq., of Detroit, J. M. Walker, esq., of Chicago, and Chase and Wilstach, appeared as attorneys for the railroad company and Williamson, and among other defenses set up the pendency of the suit in the United States circuit court in favor of Mr. Williamson against the Salem and New Albany Railroad Company and others, and procured a complete transcript of the record in that case, duly certified, and produced it to the court. Judge La Rue, who had been called to hold the White common pleas court in the Horner case, after an elaborate argument, decided that the suit in the United States circuit court
393 was no longer pending, and announced his intention to take the property from Mr. Williamson and place it in the hands of a receiver. This was some time in August, 1868. In the mean time an execution had been issued from the White common pleas court to the sheriff of Tippecanoe County, upon the judgment in favor of Kent, Crawford and Kent, and under direction of Mr. Phineas M. Kent and Mr. Crawford, some four or five of the best locomotives then in use, in operating the railroad by Mr. Williamson, were seized by the sheriff and held by him so as effectually to prevent the operation of the road. Chase and Wilstach, as attorneys for Mr. Williamson, replevied the locomotives and gave bonds required by law. Upon the announcement of Judge La Rue of his intention to appoint a receiver, and take the possession of the railroad and its appurtenances from Mr. Williamson, Mr. Joy, Phineas M. Kent, and Henry Crawford held a conference at which I was not present, but was advised that the result was that the Horner case was to be dismissed, and the Kent, Crawford and Kent judgment arranged on some terms satisfactory to the parties, but of which terms I was not apprised, and that the mortgages or trust-deeds to Mr. Williamson were to be foreclosed, and that Mr. Crawford and Chase & Wilstach were to be employed as the attorneys to foreclose them. Mr. Crawford went immediately to New York City, and on his return notified me, and I went to his residence at Brookston, taking certified copies of the trust-deeds or mortgages which I had procured some time before for use in a cross-complaint, to be filed in the Horner case, which was then dismissed. The question at once came up between Mr. Crawford and myself as to the court in which the suit should be commenced. I suggested that we should proceed in the United States circuit court at Indianapolis, and expressed my preference for that court. Mr. Crawford said that it would take much longer in that court, and be more expensive; that Mr. Williamson was old and feeble,

and that it was important to have a speedy foreclosure and sale of the road, so that a new company could be organized and the property put in a good condition for business, and for these reasons he preferred the State court. I looked upon Mr. Crawford as the senior counsel in the case, and knew that he was on more intimate terms with Mr. Joy and the large bondholders in New York, whom he had just seen, and
394 from whom he held power of attorney, and who had confided to him the original trust-deeds or mortgages, and so I acquiesced in his preference to bring the suit in the White common pleas court. During the time of our consultation I suggested the propriety of entering a formal dismissal of the case then standing on the docket of the United States circuit court, in favor of Mr. Williamson, being the same suit now proceeding in the name of Charles E. Bill, as complainant against the New Albany and Salem Railroad Company and others, before commencing the suit in the White common pleas, but Mr. Crawford replied that in his opinion the case in the United States circuit court was, to all intents and purposes, finally determined, and was no longer pending so as to affect any new suit. As this view was in accordance with the opinion of Judge La Rue, as announced in the Horner case, I again acquiesced, and the suit in White County was thereupon commenced. So far as I know, the only reason for the institution of the suit in White County for the foreclosure of the trust-deeds or mortgages were to secure expedition and economy.

Q. 9. When did you first meet Mr. George F. Talman in reference to the institution of proceedings in the State court to foreclose the mortgages or trust deeds referred to?

A. My recollection is that I saw him first on that subject in the spring of 1868, in the city of New York, while the Horner case was pending, and when I gave him the transcript prepared for the supreme court in the Kent, Crawford and Kent case, when it was determined that we should file a cross-complaint in the Horner case to foreclose the mortgage. I never saw him upon the subject of instituting an independent suit in the State courts to foreclose the mortgage.

Q. 10. Who first suggested the plan of proceeding in the State courts on the foreclosure mentioned, which took place in White County?

A. Henry Crawford, so far as I have any knowledge.

Q. 11. When, if at all, did you meet with James F. Joy in New York, in relation to the action to foreclose in the State court?

A. I never met with Mr. Joy in New York, to my recollection.

Q. 12. If you had any meetings with other persons in New York on the subject, during the year 1868, state who were present at such meeting, at what time and place did it occur, and the understanding that was arrived at by the persons composing the meeting?

395 A. The only persons I remember to have met in New York during that year, where the subject of the foreclosure of the mortgages was mentioned, were Mr. George L. Schuyler, Douw D. Williamson, and George F. Talman. I saw these gentlemen while the Horner case was pending, and the plan was to file a cross-complaint to foreclose in that suit, if the judge should hold that he would appoint a receiver. After the Horner case was compromised I never had any consultation, or had any conference with any person except Mr. Crawford, about bringing the suit in the State court, until after it was commenced, which conference with Mr. Crawford was at Brookston, as heretofore related.

Q. 13. Please state when you first met with Douw D. Williamson, George L. Schuyler, and George F. Talman in New York, in relation to the action to be taken in the State court?

A. I met these gentlemen, Mr. Schuyler at his office, at No. 37 Wall street, and Mr. Williamson and Mr. Talman at the office of the Farmers' Loan and Trust Company in Exchange place, some time in the spring of 1868, for the first time upon this subject, and it was then determined that if Judge LaRue should decide the Horner case adversely to Mr. Williamson, that we should file a cross-complaint in that court to foreclose the mortgages, but I never saw those gentlemen, or either of them in New York or elsewhere, to my recollection, upon the subject of instituting an independent suit for the forclosure of mortgages in the State court until the suit in White common pleas court was commenced.

Q. 14. Who first advised resort to the State court to foreclose upon the trust-deeds referred to?

A. So far as I know, Henry Crawford.

Q. 15. About what time did you first learn that George L. Schuyler was in any way connected, or to be connected with the business of a recapitalization of the company upon the basis of the eight per cent. and ten per cent. bonds of the New Albany & Salem Railroad Company?

A. I think, on the 7th or 8th day of April, 1869.

Q. 16. At the time you, in conjunction with Henry Crawford, esq., commenced the action of foreclosure in the White common pleas court, what knowledge, if any, had you that James F. Joy was of counsel for the plaintiff, or for the bondholders who were directing the matter of foreclosure in respect to the action to be commenced?

396 A. I had no knowledge that he was attorney for them. I knew that he was on very friendly terms with Mr. Williamson, Mr. Schuyler, and Mr. Talman, from what they all told me, and from common report; understood that all the large bondholders of the New Albany and Salem Railroad Company had great confidence in Mr. Joy's opinion and advice.

Q. 17. What, if any, relation had Mr. Joy borne to the litigations of the trustee, Williamson, or to the Louisville, New Albany and Chicago Railroad Company in respect to its bonded debt, prior to the time that you became one of the attorneys in the foreclosure action in the White common please court?

A. None to my knowledge, except that he was attorney for the railroad company and Mr. Williamson in the Horner case, wherein it had been determined to file a cross-complaint to foreclose the mortgages in the event of an unfavorable decision from Judge LaRue.

The further taking of this deposition is adjourned until Monday, August 26, 1872, at half past ten o'clock a. m.

At half past ten o'clock a. m., of Monday the 26th day of August, 1872, the taking of this deposition is resumed.

Q. 18. At what time did you first learn, if at all, that James F. Joy was one of the attorneys for the complainant, in the foreclosure proceeding in the White common pleas court?

A. I never knew that he was employed as an attorney in that case.

Q. 19. Did Mr. Joy, when his name was suggested to the White common pleas court for the office of receiver in the case of Williams, trustee, against the Louisville, New Albany and Chicago Railroad Company and others, hold any of the ten per cent. or eight per cent. bonds of the New Albany and Salem Railroad Company? If he did hold any such bonds were you advised of the fact *of* when he was named as such receiver?

A. I never had any knowledge whatever that Mr. Joy was ever the

holder of the bonds of any description made by the New Albany and Salem Railroad Company.

Q. 20. Had you been advised that Joy was employed as one of the attorneys in the foreclosure suit referred to, would you have suggested him as a proper person to be appointed as receiver in the suit?

A. I should not, because the State of Indiana says, "No
397 party, or attorney or other person interested in an action shall be appointed receiver therein," and I had examined that statute with reference to the appointment of Mr. Joy as receiver in the Horner case, and found that he was disqualified because he was one of the attorneys for the defendants.

Q. 21. Of your firm, what participation did Mr. Wilstach have in relation to the foreclosure suit referred to in the White common pleas court?

A. Mr. Wilstach gave no personal attention to the foreclosure suit. I do not think he was present at any of the consultations, or at any of the arguments before the court, nor was he present at the trial or at the sheriff's sale. His name was used as one of the attorneys for the plaintiff, but he did not participate in the duties of an attorney in the case, individually, except perhaps to copy some papers or draft some affidavits in our office under my direction. The complaint was prepared in White County principally, or entirely, by Mr. Crawford, the most of it in my presence, and it never was in the office of Chase & Wilstach until after it had been filed in the White common pleas court.

HIRAM W. CHASE.

Certified by W. C. Wilson, commissioner United States court, district of Indiana.

Filed September 9, 1872.

Here follows the record of the White County common pleas, to wit:

398 Pleas before the honorable Bernard F. Schermerhorn, sole judge of the fifteenth judicial district, in the State of Indiana:

Be it remembered, that on the 4th day of September, 1868, Douw D. Williamson, by Henry Crawford and Chase and Wilstach, his attorneys, filed in the office of the clerk of the court of common pleas of White County, in the State of Indiana, his complaint against the Louisville, New Albany and Chicago Railroad Company and others, which complaint is in the words and figures following, to wit:

White common pleas.—September term, 1868.

STATE OF INDIANA, *White County, ss:*

Douw D. Williamson, plaintiff, complains of the Louisville, New Albany and Chicago Railroad Company, James M. Rawlins, Morris McDonald, Hiram Matthews, Lazarus B. Wilson, John T. Huff, Selah Chamberalin, Eli Heidelberger, Abraham Leopold, Thomas J. S. Hickson, James Haskell, Samuel K. Johnson, and Martin Beck, and says that, in the month of July, 1847, the said Louisville, New Albany and Chicago Railroad Company was duly incorporated by a public act of the general assembly of the State of Indiana, and under the then corporate name and appellation of the New Albany and Salem Railroad Company, and by virtue of said act of incorporation and the subsequent acts of the legislature of said State, amendatory of the

A. I met these gentlemen, Mr. Schuyler at his office, at No. 37 Wall street, and Mr. Williamson and Mr. Talman at the office of the Farmers' Loan and Trust Company in Exchange place, some time in the spring of 1868, for the first time upon this subject, and it was then determined that if Judge LaRue should decide the Horner case adversely to Mr. Williamson, that we should file a cross-complaint in that court to foreclose the mortgages, but I never saw those gentlemen, or either of them in New York or elsewhere, to my recollection, upon the subject of instituting an independent suit for the forclosure of mortgages in the State court until the suit in White common pleas court was commenced.

Q. 14. Who first advised resort to the State court to foreclose upon the trust-deeds referred to?

A. So far as I know, Henry Crawford.

Q. 15. About what time did you first learn that George L. Schuyler was in any way connected, or to be connected with the business of a re-capitalization of the company upon the basis of the eight per cent. and ten per cent. bonds of the New Albany & Salem Railroad Company?

A. I think, on the 7th or 8th day of April, 1869.

Q. 16. At the time you, in conjunction with Henry Crawford, esq., commenced the action of foreclosure in the White common pleas court, what knowledge, if any, had you that James F. Joy was of counsel for the plaintiff, or for the bondholders who were directing the matter of foreclosure in respect to the action to be commenced?

396 A. I had no knowledge that he was attorney for them. I knew that he was on very friendly terms with Mr. Williamson, Mr. Schuyler, and Mr. Talman, from what they all told me, and from common report; understood that all the large bondholders of the New Albany and Salem Railroad Company had great confidence in Mr. Joy's opinion and advice.

Q. 17. What, if any, relation had Mr. Joy borne to the litigations of the trustee, Williamson, or to the Louisville, New Albany and Chicago Railroad Company in respect to its bonded debt, prior to the time that you became one of the attorneys in the foreclosure action in the White common please court?

A. None to my knowledge, except that he was attorney for the railroad company and Mr. Williamson in the Horner case, wherein it had been determined to file a cross-complaint to foreclose the mortgages in the event of an unfavorable decision from Judge LaRue.

The further taking of this deposition is adjourned until Monday, August 26, 1872, at half past ten o'clock a. m.

At half past ten o'clock a. m., of Monday the 26th day of August, 1872, the taking of this deposition is resumed.

Q. 18. At what time did you first learn, if at all, that James F. Joy was one of the attorneys for the complainant, in the foreclosure proceeding in the White common pleas court?

A. I never knew that he was employed as an attorney in that case.

Q. 19. Did Mr. Joy, when his name was suggested to the White common pleas court for the office of receiver in the case of Williams, trustee, against the Louisville, New Albany and Chicago Railroad Company and others, hold any of the ten per cent. or eight per cent. bonds of the New Albany and Salem Railroad Company? If he did hold any such bonds were you advised of the fact *of* when he was named as such receiver?

A. I never had any knowledge whatever that Mr. Joy was ever the

holder of the bonds of any description made by the New Albany and Salem Railroad Company.

Q. 20. Had you been advised that Joy was employed as one of the attorneys in the foreclosure suit referred to, would you have suggested him as a proper person to be appointed as receiver in the suit?

A. I should not, because the State of Indiana says, "No
397 party, or attorney or other person interested in an action shall be appointed receiver therein," and I had examined that statute with reference to the appointment of Mr. Joy as receiver in the Horner case, and found that he was disqualified because he was one of the attorneys for the defendants.

Q. 21. Of your firm, what participation did Mr. Wilstach have in relation to the foreclosure suit referred to in the White common pleas court?

A. Mr. Wilstach gave no personal attention to the foreclosure suit. I do not think he was present at any of the consultations, or at any of the arguments before the court, nor was he present at the trial or at the sheriff's sale. His name was used as one of the attorneys for the plaintiff, but he did not participate in the duties of an attorney in the case, individually, except perhaps to copy some papers or draft some affidavits in our office under my direction. The complaint was prepared in White County principally, or entirely, by Mr. Crawford, the most of it in my presence, and it never was in the office of Chase & Wilstach until after it had been filed in the White common pleas court.

HIRAM W. CHASE.

Certified by W. C. Wilson, commissioner United States court, district of Indiana.

Filed September 9, 1872.

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White common pleas.—September term, 1868.

STATE OF INDIANA, *White County, ss:*

Douw D. Williamson, plaintiff, complains of the Louisville, New Albany and Chicago Railroad Company, James M. Rawlins, Morris McDonald, Hiram Matthews, Lazarus B. Wilson, John T. Huff, Selah Chamberalin, Eli Heidelberger, Abraham Leopold, Thomas J. S. Hickson, James Haskell, Samuel K. Johnson, and Martin Beck, and says that, in the month of July, 1847, the said Louisville, New Albany and Chicago Railroad Company was duly incorporated by a public act of the general assembly of the State of Indiana, and under the then corporate name and appellation of the New Albany and Salem Railroad Company, and by virtue of said act of incorporation and the subsequent acts of the legislature of said State, amendatory of the

399 said original act, and dated February 11, 1848, January 12, 1849, January 12, 1850, and January 8, 1851, said railroad company had full authority and franchise to build, locate, contract, equip, maintain, and operate a line of railroad in the State of Indiana, from New Albany, in the county of Floyd, through the counties of Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, and La Porte, to Michigan City in the said last-named county, and for the purpose of locating, constructing, equipping, and operating said line of railroad had full power and lawful authority for such purpose to borrow money for the prosecution of said work, either within or without the State of Indiana, upon such terms as might be agreed upon between the parties to such loan; and, also, full power and lawful authority to issue its corporate bonds or obligations to evidence such loans, and to secure the payment of the same by a mortgage of any part or of all the corporate property; and, also, to mortgage or pledge the whole or any portion of the road, constructed or proposed to be constructed by it, as a security for moneys loaned or advanced to said corporation. And on or about the 8th day of February, 1851, the said railroad company, under the then corporate name of the New Albany and Salem Railroad Company, and having all and singular the rights, powers, and franchises heretofore particularly enumerated, and being at said time engaged in locating, constructing, and operating a portion of her line of road lying between New Albany and the town of Gosport, and being at the distance of one hundred and twelve $\frac{71}{100}$ miles, and being in want of funds wherewith to complete the said line, and for the sole purpose of raising the moneys necessary to build and equip said line of railway with ties, bridges, iron, tanks, depots, and rolling-stock, did make and issue under due authority of law 500 corporate bonds of the sum of $1,000 each, 100 thereof due April 1, 1859, 100 thereof due April 1, 1860, 100 thereof due April 1, 1861, 100 thereof due April 1, 1862, and 100 thereof due April 1, 1863, and all of said bonds payable without any relief from valuation laws, and with interest upon the amount of said bonds computed at 10 per cent. per annum, and payable semi-annually, on the 1st days of April and October at the office of the Farmers' Loan and Trust Company, in the city of New York.

And at the date aforesaid, under and by the authority of her original charter and the acts amendatory thereof, the said New Albany and Salem Railroad Company, under her corporate seal, and in due form
400 of law, executed her certain obligations in writing, commonly called a trust mortgage, and then and there delivered the same to this plaintiff, in trust, to secure the payment of the principal and interest of said loan as evidence as aforesaid, by said 500 bonds of $1,000 each, thereby conveying to said Williamson, trustee as aforesaid, all that part of said railroad lying between New Albany and Gosport, then made and to be made, together with the right of way, ties, bridges, iron, superstructure, and tracks thereon, and the materials and machinery purchased with said bonds or money obtained therefor, fences, depot grounds, and buildings thereon, engines, cars, tenders, tolls, materials, machinery, and all other personal property, right thereto, or interest therein, pertaining to said part of said road, together with the rents, tolls, and income to be had or levied thereon, and all the franchises, rights, and privileges of said railroad company, upon the terms and conditions, and upon certain powers more fully and at large set out in said trust mortgage, a copy of which is herewith filed and made part hereof marked A.

And at and about the date last aforesaid, the said New Albany and

Salem Railroad Company negotiated all and every part of said issue of 500 bonds of $1,000 each, and received and appropriated the moneys received therefor, and thereupon the said Williamson, in the discharge of his duties as trustee, caused the said mortgage to be duly recorded in the said counties of Floyd, Clark, Washington, Orange, Lawrence, Monroe, and Owen, within 90 days from the date thereof, and the said mortgage then and thereby became, and has ever since continued to be, the first valid and subsisting lien upon that part of said road, and all the right of way, superstructure, tracks, depot grounds, and buildings thereon, shops, tanks, fences, bridges, cars, tools, engines, machinery, and appurtenances, and all tolls, revenues, and franchises appurtenant to aid part of said road.

And the plaintiff further avers that the said railroad company has made default in the payment of both principal and interest of the said 500 bonds, and that all of the principal is now due and unpaid, and that the semi-annual interest, which has accrued thereon since April, 1861, has also been suffered to become due, and now amounting to the sum of $350,000, remains unpaid to the several holders of said bonds. The said issue of 500 bonds is held by bona-fide owners in the city of New York and elsewhere, but in what amounts, or by whom held, the said Williamson is not able to say, but he avers, on information
401 and belief, that the parties hereinafter named are now the owners of the several amounts set opposite their names, viz:

Farmers' Loan and Trust Company	$1,000,000
George F. Talman	20,000
Frederick Schuchardt	5,000
William H. Bradford	27,000
A. S. Murray	2,000
G. Merle	5,000
Jonathan T. Wells	6,000
Fred. Schuchardt & Sons	10,000
J. S. Carpenter	3,000
James H. Bancher	15,000
Awa Lanunt	6,000
Samuel Sloan	4,000
H. Amy, as trustee	18,000
Fred. Schuchardt & Sons, in trust for Phillip Schmidt	49,000
W. Schall & Co., trustees	8,000
Fred. Probst & Co., trustees	7,000
F. Schuchardt, trustee	8,000

And said several holders of said bonds have in person and by their duly constituted agent, in accordance with the terms and provisions of said trust-mortgage, requested said plaintiff to proceed to foreclose said mortgage, and enforce the collection of their several claims against the said property therein specifically set out.

And the said Williamson further says that on or about the 14th day of February, 1852, the said Louisville, New Albany and Chicago Railroad Company, by its then corporate name of the New Albany and Salem Railroad Company, under and by its original charter and the divers acts amendatory thereof which are hereinbefore at length enumerated, was engaged in the location, construction, operation, and equipment of its existing and contemplated line of railroad from New Albany, in the county of Floyd, to Michigan City, in the county of La Porte, and in the exercise of her chartered powers, and for the sole purpose of raising

the moneys necessary for the completion, equipment, and operation of her said existing and projected road, she did, on or about the said date, prepare and issue her corporate bonds to the aggregate amount of two millions three hundred and twenty-five thousand dollars, payable without any relief from valuation laws, and with coupons or interest-war-
402 rants computed at 8 per centum per annum, attached to each bond, payable semi-annually at the office of the Farmers' Loan and Trust Company, of the city of New York on the 1st days of May and November of each year until maturity, 2,000 of said issue of bonds being of the sum of $1,000 each, and 650 of said issue being of the sum of $500.

And of said issue of bonds the sum of one hundred and twenty-five thousand dollars were by their tenor to become due and payable May 1, 1864, and two hundred thousand dollars more were by their tenor due and payable on the first of each May thereafter, up to and including the 1st day of May, 1875.

And the said issue of said two million three hundred and twenty-five thousand dollars was secured by a certain other obligation in writing, duly executed under the corporate seal of said company, conveying to said Williamson, as a trustee for each and all the holders of said bonds, the entire line of the said then New Albany and Salem Railroad as made, and to be made, between New Albany and Michigan City, and the branch between Gosport and Indianapolis, made and to be made, together with the right of way and the land occupied thereby, the superstructure and the track thereon, and all rails and other materials used therein or procured therefor, including the iron rails purchased, or to be purchased with said bonds or the money procured therefor, and the machinery, bridges, viaducts, culverts, fences, depot grounds and buildings thereon, engines, tenders, cars, tools, materials, and all other personal property pertaining to said road, together with the income, rents, and tolls to be levied from the same, and all the franchises, rights and privileges of the said New Albany and Salem Railroad Company, in and to the same, upon the terms and conditions and upon the powers therein contained, which are more at length enumerated in the said trust-mortgage, a copy of which is herewith filed and made part hereof, marked B.

And at and about the said date of February, 1852, the said New Albany and Salem Railroad Company proceeded to negotiate the said issue of $2,325,000 of bonds, and the plaintiff being charged thereby with certain duties as trustee for such bondholders caused the trust-mortgage to be duly recorded within 90 days from its date, in the several counties of Floyd, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, La
403 Porte, Morgan, and Marion, thereby causing the said mortgage to become a second lien on that part of the said railroad from New Albany to Gosport, and the first lien upon the remainder of the said line, and all the right of way, superstructure, tracks, rails, bridges, fences, depot-grounds and buildings, machinery, engines, cars, tools, materials, and appurtenances, together with the tolls, revenues, and income to be levied therefrom, and all the rights, privileges, and franchises of said company pertaining thereto.

And the plaintiff avers that the said railroad company had made default in the condition of said mortgage, and that there is now due of the principal of said last issue of bonds the sum of $925,000, which remains wholly unpaid to the several holders thereof, and the further sum of $1,302,000 of the semi-annual interest due upon said bonds, is long since past due, and remains unpaid.

And the entire issue of said $2,325,000 of bonds is still outstanding and protected and secured by the provisions of said trust-mortgage, marked B, and the holders thereof are very numerous and scattered, and this plaintiff is not able to give the names of all said holders, or the several amounts held by each, but he is the holder in his own right of $35,000 of said issue, together with the unpaid coupons belonging to his said bonds, and all of the entire issue of said bonds, except as to number, maturity, and payment, are all of the same effect and tenor as the copy herewith filed, and marked C. The plaintiff avers that the said contemplated branch road from Gosport to Indianapolis, was never completed, and has long since been abandoned, and the said mortgage is no longer a lien upon the said contemplated branch, but that upon all the existing line of road now operated by the said Louisville, New Albany and Chicago Railroad Company, right of way, depot-grounds and buildings, rails, machinery, cars, engines, tools, materials, and all property of every kind and description, and the rents, income, and tolls to be levied therefrom, and franchises, rights, and privileges of said company, the said mortgage is a valid, subsisting, and unsatisfied lien in manner and form as aforesaid.

And the plaintiff further avers, that he has been, in accordance with the condition of said mortgage, requested by a majority in amount of the holders of said issue of bonds, to proceed to foreclose the said mortgage, and compel the payment of the several demands due them.

And the said Williamson further says that on the 3d of November, 1863, the said railroad company defendant, under its then
404 corporate name of the New Albany and Salem Railroad Company, was still engaged in the construction of its line of railway from New Albany to Michigan City, and being in want of means and for the sole purpose of raising the money necessary to complete, construct, equip, and operate the said line of road, did prepare and issue, under due authority of law, her corporate bonds to the number of one thousand, and of the amount of $1,000 each, making in all the sum of one million dollars, which said bonds were all payable without any relief from valuation laws and with interest-warrants attached to each bond, with interest computed at the rate of 7 per cent. per annum, and payable semi-annually at the office of the Farmers' Loan and Trust Company in the city of New York, on the 1st day of September and June of each year, all of which said issue of bonds were by their tenor due and payable on June 1, 1873. Said issue of bonds were secured by a certain instrument in writing, under the corporate seal of said New Albany and Salem Railroad Company, called a trust-mortgage, executed and delivered to the plaintiff in due form of law at said date last aforesaid, in trust to secure the payment of principal and interest of said loan and in trust for such purpose conveying to the plaintiff all the line of railroad between New Albany and Michigan City and between Gosport and Indianapolis, made and to be made, including the right of way, and the land occupied thereby, together with the superstructure and tracks thereon, and all the materials purchased with said bonds or proceeds thereof, machinery, bridges, culverts, fences, engines, cars, wood, tools, materials, and all other personal property, together with the incomes and issues to be levied therefrom, and the franchises, rights, and privileges belonging to said road, upon the powers, terms, trusts, and conditions more particularly set out in the said trust-mortgage, a copy of which is herewith filed and made part hereof, marked D.

And immediately thereafter and within ninety days after the date of

said mortgage, the plaintiff caused it to be duly recorded in the counties of Floyd, Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Stark, La Porte, Morgan, and Marion, and the same thereby became the third lien upon the said railroad from New Albany to Gosport, and the second lien from Gosport to Michigan City, together with all the rights of way, land, depots, fences, bridges, rails, engines, cars, wood, machinery, materials, and the rents and income had or levied therefrom, and the franchises, rights, and privileges of said corporation.

405 And the said railroad company have broken the condition of said mortgage and have failed to pay the semi-annual interest due upon said issue of bonds since December 1, 1855, amounting to the sum of eight hundred and five thousand dollars, which remains unpaid and due the several holders of said bonds, who are very numerous, and their names are not known to the plaintiff.

The said Williamson further says that on or about the first day of February, 1855, the railroad company defendant, then known as the New Albany and Salem Railroad Company, had completed the whole line of her road from New Albany to Michigan City, and being in want of funds to properly operate the same, and for the sole purpose of raising the means to purchase engines, machinery, and supplies to operate the said road, and develope the business thereof, made and issued in due form of law, 1,160 bonds of the sum of $1,000 each, and 160 of the sum of $500 each, payable without relief from valuation laws, and with interest-warrants attached, computed after the rate of 7 per cent. per annum, payable semi-annually at the office of the Farmers' Loan and Trust Company, in the city of New York, on the 1st days of August and December, until the maturity of the said last-named bonds on the 1st day of February, 1885.

Which said issue of bonds were secured by a certain trust-mortgage, under the seal of said company, and executed and delivered at said date in due form of law, to the plaintiff, conveying to him in trust for the different holders of said security the whole line of road from said New Albany to Michigan City, made and to be made, including the right of way and land occupied thereby, the superstructure and track thereon, bridges, culverts, fences, depot grounds and buildings, engines, cars, machinery, tools, materials, and all other personal property, and the rents, income and tolls to be had or levied from the same, and all the rights, privileges, and franchises belonging to the said road, upon the terms, conditions, trusts, and powers contained therein, a copy of which trust-mortgage is herewith filed and made part hereof, marked E.

And the whole issue of said bonds was negotiated, and the plaintiff, as such trustee, caused said trust-mortgage, within 90 days after its date, to be duly recorded in the counties of Floyd, Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe,

White, Pulaski, Starke, and La Porte, in which said railroad was,

406 and is situated, and the said trust-mortgage thereby became, and has since continued, a valid and subsisting fourth lien upon that part of said railroad lying between New Albany and Gosport, and a third lien upon the remaining part of said railroad between Gosport and Michigan City, and the right of way and land occupied thereby, superstructure, tracks, iron, fences, depots, shops, engines, cars, machinery, materials and appurtenances, and the tolls, revenues, and income to be had or levied therefrom, and the franchises, rights and privileges belonging to said corporation.

And the said company has made default in the payment of said bonds and interest and has broken the condition of said mortgage, and all the interest upon said bonds, due since the 1st of August, 1856, has been unpaid, amounting to the sum of eight hundred and five thousand dollars, which is now due and unpaid to the several holders of said bonds, who are very numerous, and their names and residences are unknown to this plaintiff.

And the said plaintiff further says that on or about the 21 of December, 1856, the said railroad company defendant, then known as the New Albany and Salem Railroad Company, being in want of means to fully equip and operate the said line of railroad, and pay off certain indebtedness due and owing by said railroad company, and for the purpose of raising means, prepared and issued a certain other number of bonds, being 800 in number of $500 each, and 1,000 bonds of $100 each, making in all $500,000 in amount, payable at the office of the Farmers' Loan and Trust Company, in the city of New York, without relief from valuation laws, and with interest-warrants attached with interest computed at the rate of ten per cent. per annum, on the first days of June and December in each year, and the principal to be due and payable on the 1st day of December, 1860, all of which bonds were secured by a certain instrument in writing, under the corporate seal of said railroad company, executed and delivered in due form of law, and called a trust-mortgage, dated January 13, 1857, conveying to said plaintiff, as a trustee for the benefit of the holders of said issue of bonds, all her personal property upon and appurtenant to, the line of railroad from New Albany to Michigan City, including engines, cars, tools, machinery, cross-ties not laid in the road, wood delivered on the line of the road, and all other personal property of whatever kind provided for, or used in con-
407 nection with, said railroad, upon the conditions and terms and upon the powers therein contained, a copy of which deed of mortgage is herewith filed and made part hereof, marked F.

And at and about the date of said last-named mortgage, the said company then negotiated bonds of the issue and description last aforesaid, as follows, viz, to the amount of four hundred and two thousand four hundred dollars; and the remainder of said bonds were never sold or negotiated. And within ten days after the date of said mortgage and its delivery, the plaintiff caused the said trust-mortgage to be duly recorded in the county of Floyd and the other counties through which said railroad is situated, between that point and Michigan City.

And the company defendant has broken the conditions of said last-named mortgage and has failed to make any payment upon the principal or interest of said last-named issue of bonds, so that the whole of said principal, viz, $402,400, and interest thereon to the amount of $463,760, is wholly due and unpaid to the holders of said last issue of bonds, who are numerous and scattered, and the plaintiff is not able to state their names, residences, or the amounts held by them respectively

And on day of November, 1859, the corporate name of the said New Albany and Salem Railroad Company was, under due authority of law, changed to the Louisville, New Albany and Chicago Railroad Company, by which name said corporation has ever since been known and distinguished, and as such corporation, and under the charter of said New Albany and Salem Railroad Company, and the acts amendatory thereof, the said Louisville, New Albany and Chicago Railroad Company, has ever since said date aforesaid, and still is, possessed and owns that line of railroad from New Albany to Michigan City, and all the real and

personal property in any way pertaining thereto, and the rents, incomes, and tolls levied therefrom, and all and singular the rights, privileges, and franchises granted and bestowed by said original act of incorporation, and the acts amendatory thereof, in fee-simple, subject only to the several liens of the five different mortgages, which have been hereinbefore enumerated.

And the plaintiff further says that the defendants, James M. Rawlins and Morris McDonald, on the 26th day of April, 1865, by the consideration of the Floyd circuit court, recovered judgment against the said railroad company, for the sum of $478.92; that the defendant, Hi-
408 ram Matthew, on the 19th of September, 1867, by the consideration of the Washington circuit court, recovered judgment for the sum of $193.10 against said railroad company; that the defendant, Lazarus B. Wilson, on the 29th of December, 1858, by the consideration of the Putnam circuit court, recovered judgment against the said railroad company then known as the New Albany and Salem Railroad Company, for the sum of $5,988.

That the defendant, John T. Huff, on the 6th of November, 1857, recovered judgment in the Tippecanoe circuit court for the sum of $2,708. That the defendant, Selah Chamberlain, on the 17th of January, 1867, by the consideration of the White common pleas court, recovered judgment against said railroad company for the sum of $44,823.

That the defendants, Eli Heidleberger and Abram Leopold, on the 23d of January, 1868, by the consideration of the White common pleas court, recovered judgment against said railroad company for the sum of $120.

That the defendant, Thomas J. S. Hickson, on February 24, 1859, by the consideration of the La Porte circuit court, recovered judgment against said railroad company, then known as the New Albany and Salem Railroad Company, for the sum of $160.

That the defendant, James Haskel, on February 25, 1859, in the La Porte common pleas court, recovered judgment for $487.20, and on the 11th of February, 1868, in the same court, recovered judgment for $424.

That the defendant, Samuel K. Johnson, on November 4, 1867, recovered judgment against said railroad company for $100 in the La Porte circuit court. That the defendant, Martin Beck, on May 4, 1868, by the consideration of the La Porte circuit court, recovered judgment against said railroad company, for the sum of $100, all of which judgment' are, as the said Williamson is advised and so charges, unpaid and owing by the said Louisville, New Albany and Chicago Railroad Company to the several judgment plaintiffs, and said judgments are by statute constituted a lien upon the property of the said railroad company, situated in the several counties where the said judgments have been rendered, but said lien of each, and every one of said judgment creditors is, and of right ought to be, inferior to each and all of the said five mortgages hereinbefore enumerated, and the claim of the bondholders thereby secured to all and singular the property of the company, and upon the foreclosure of their several mortgages a final decree ought to be
409 entered, declaring the priority of said bondholders to said judgment creditors as to the property covered by said mortgages, and barring all of the equity of redemption of each and every of said judgment creditors in and to all and singular the property covered by the said several mortgages.

And the plaintiff further says that the Louisville, New Albany and Chicago Railroad Company is utterly insolvent, and that all of her

property is not sufficient to pay the just debts and liabilities of said corporation.

That the said Louisville, New Albany and Chicago Railroad Company's property covered by, and included in the said mortgage, is not sufficient to pay the debts secured thereby.

That the said Louisville, New Albany and Chicago Railroad Company has not held an election for directors, nor has there been a meeting of her directors for the space of eight years last past. Wherefore, in view of the premises that said plaintiff being such common trustee for all the bondholders of the several classes and priorities mentioned in, and provided for by, the five several trust-mortgages, which have been specially set out herein, for the purpose of discharging and closing the duties of his trust, in behalf of all and every bondholder of each and every class secured as aforesaid, prays that each and all the said mortgages, the conditions of which have been broken, may be foreclosed by this court; that an account may be had and judgment rendered in behalf of this plaintiff, as trustee for the use and benefit of each and every bondholder of the said Louisville, New Albany and Chicago Railroad Company for the amounts which may be found due and owing by the said company to each and every such bondcreditor, and that a final account may be had, and each and all questions of law or equity as to the different rights or priorities of the several classes of bondcreditors in, to, and upon the property of the said railroad company, or any part thereof, may now be finally heard, adjudged, and determined, and that a final decree may be entered in the action, ascertaining the amounts now severally due upon the five issues of bonds aforesaid, and the manner in which the said bondcreditors may come in and share in the decree and the respective claims, liens, and priorities of each and all said classes of creditors in and to all or any part of the corporate property of the said railroad company, and declaring the condition of each and all said mortgages to be broken, and ordering the sale of all and singular the property of said railroad company and its franchises, rights, and privileges, either as an entirety or in such manner as may be satisfactory to the parties, or ordered by the court to satisfy the said several debts in the order of their priorities, and further determining the rights and equities of each and all the judgment creditors in and to the said property or any part thereof, and ordering that, upon their failure to redeem the said premises from the claims of the said mortgage debts, *that* upon the final sale all the equity of redemption and claim, lien or title of all or any of the said judgment creditors shall be forever barred and foreclosed, and they be perpetually enjoined from hereafter setting up any claim to the said property, or any part thereof, and the said corporation being insolvent, and the mortgaged property being insufficient to pay the said mortgaged debts hereinbefore set out; and the said railroad company having failed and neglected for the past eight years to hold meetings of or elections for directors, as provided by her charter, the plaintiff prays that pending the litigation a receiver may be appointed by this court to take possession of the said railroad company, and all its property of every kind and description, both real and personal, and hold and manage and receive and disburse the rents, income, and tolls thereof, under such regulations and conditions as may be established by the court, and be in accordance with equity practice, and protect and preserve the fund for the benefit of the several parties entitled.

And the plaintiff further prays for all such relief as may be proper or

essential to the rights of any of his cestui que trusts, and the court may be competent to award in the premises.

HENRY CRAWFORD,
CHASE & WILSTACH,
Attorneys for Plaintiff.

Exhibit A, referred to in complaint.—Mortgage.

This indenture, made the 8th day of February, one thousand eight hundred and fifty-one, between the New Albany & Salem Railroad Company, a corporation duly constituted as such by the laws of the State of Indiana, of the first part, and Douw D. Williamson, of the city of New York, of the second part.

Whereas the parties of the first part, pursuant to the terms of the statute of said State incorporating them, and other statutes amendatory thereto, are engaged in constructing that part of their railroad
411 which lies between New Albany and Gosport, inclusive, in the State aforesaid, being of the length of one hundred and twelve and seventy-one hundredths miles, and for that purpose need, and have resolved to purchase and transport, iron rails and chairs and other necessary iron and machinery to equip the road, and also to raise money by loan for such purchase and transportation as the wants of the company may require on this part of their road to an amount not exceeding five hundred thousand dollars, and in order to secure payment therefor, or repayment thereof, to execute certain bonds, not exceeding five hundred in number, for the sum of one thousand dollars each, bearing an interest of 10 per centum per annum, payable semi-annually in the city of New York, which bonds shall be on equality, so far as regards security for the repayment thereof by these presents, notwithstanding the same may be issued at different times, each of said bonds authenticated by a certificate, signed by said party of the second part, and containing a clause permitting the holder thereof to exchange the same at par for shares of stock in said railroad company at any time previous to the maturity of said bond:

Now, therefore, this indenture witnesseth that the said parties of the first part, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to them, at the sealing and delivering hereof, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said party of the second part and his successors in the trust hereby created and signed, all the following present and in future to be acquired property of the parties of the first part pertaining to that part of their road which lies between New Albany and Gosport; that is to say, their road made and to be made, including the right of way and land occupied thereby, together with the superstructure and tracks thereon, and all rails and other materials used therein or procured therefor, inclusive of the iron rails purchased or to be purchased or paid for with the above-described bonds, or the money, obtained therefor, and the machinery purchased with the same; bridges viaducts, culverts, fences, depot-grounds, and buildings thereon, engines, tenders, cars, tools, materials, machinery, and all other personal property, right thereto or interest therein pertaining as aforesaid, together with the tolls, rents, or income to be had or levied therefrom,
412 and all franchises, rights, and privileges of the said parties of the first part of, in, to, or concerning the same; but nothing herein con-

tained shall be construed to prevent the parties of the first part from selling, hypothecating, or otherwise disposing of any surplus lands of the company not necessary to be retained for their roadway, depot-grounds, stations, nor required for the construction or convenient use of their road, nor from collecting moneys due the company, or stock subscriptions, or otherwise, provided they shall dilligently proceed to collect and faithfully apply all such means to the construction and equipment of their said road.

To have and to hold said premises, and every part thereof, with the appurtenances, unto the said party of the second part, his successors in said trust, and assigns, upon the following trusts, that is to say: In case the said parties of the first part shall fail to pay the principal, or any part thereof, or any of the interest on any of said bonds at any time when the same may become due and payable, according to the tenor thereof when demanded, then, after sixty days from such default, upon request of the holder of such bond, the said party of the second part, his successors in said trust, or assigns, shall enter into and take possession of all and any part of said premises and property; and, as the attorney in fact or agent of the said parties of the first part, by himself or agents, or substitutes duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and additions thereto, and, after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of all said bonds remaining unpaid, or the said party of the s cond part, his successors in the said trust and asisgns, at his or their discretion may, or, on the written request of the holders of at least one-half of the bonds unpaid and unconverted into stock, shall, cause the said premises, or so much thereof as shall be necessary to pay and discharge the principal and interest of all such said bonds as may then be unpaid and unconverted as aforesaid, to be sold at public auction in the city of New Albany, in the State of Indiana, or in the city of New York, giving at least forty days' notice of the time, place, and terms of said sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of the cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which shall be a bar against
413 the parties of the first, their successors and assigns, and all persons claiming under them, of all right, interest, and claim in or to said premises, or any part thereof; and said trustee shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and shall restore the residue thereof to the parties of the first part; it being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension-laws by the said parties of the first part, nor any injunction or stay of proceedings, or any process be applied for or obtained by them to prevent such entry or sale as aforesaid. And the said parties of the first part hereby covenant, for the consideration aforesaid, to execute and deliver any further reasonable and necessary conveyance of the said premises, or any part thereof, to the said party of the second part, his successors in said trust and assigns, for more fully carrying into effect the object hereof, particularly for the conveyance of any property subsequently to the date hereof acquired by said parties of the first part, and comprehended in the description contained in the premises,

essential to the rights of any of his cestui que trusts, and the court may be competent to award in the premises.

HENRY CRAWFORD,
CHASE & WILSTACH,
Attorneys for Plaintiff.

Exhibit A, referred to in complaint.—Mortgage.

This indenture, made the 8th day of February, one thousand eight hundred and fifty-one, between the New Albany & Salem Railroad Company, a corporation duly constituted as such by the laws of the State of Indiana, of the first part, and Douw D. Williamson, of the city of New York, of the second part.

Whereas the parties of the first part, pursuant to the terms of the statute of said State incorporating them, and other statutes amendatory thereto, are engaged in constructing that part of their railroad
411 which lies between New Albany and Gosport, inclusive, in the State aforesaid, being of the length of one hundred and twelve and seventy-one hundredths miles, and for that purpose need, and have resolved to purchase and transport, iron rails and chairs and other necessary iron and machinery to equip the road, and also to raise money by loan for such purchase and transportation as the wants of the company may require on this part of their road to an amount not exceeding five hundred thousand dollars, and in order to secure payment therefor, or repayment thereof, to execute certain bonds, not exceeding five hundred in number, for the sum of one thousand dollars each, bearing an interest of 10 per centum per annum, payable semi-annually in the city of New York, which bonds shall be on equality, so far as regards security for the repayment thereof by these presents, notwithstanding the same may be issued at different times, each of said bonds authenticated by a certificate, signed by said party of the second part, and containing a clause permitting the holder thereof to exchange the same at par for shares of stock in said railroad company at any time previous to the maturity of said bond:

Now, therefore, this indenture witnesseth that the said parties of the first part, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to them, at the sealing and delivering hereof, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said party of the second part and his successors in the trust hereby created and signed, all the following present and in future to be acquired property of the parties of the first part pertaining to that part of their road which lies between New Albany and Gosport; that is to say, their road made and to be made, including the right of way and land occupied thereby, together with the superstructure and tracks thereon, and all rails and other materials used therein or procured therefor, inclusive of the iron rails purchased or to be purchased or paid for with the above-described bonds, or the money, obtained therefor, and the machinery purchased with the same; bridges viaducts, culverts, fences, depot-grounds, and buildings thereon, engines, tenders, cars, tools, materials, machinery, and all other personal property, right thereto or interest therein pertaining as aforesaid, together with the tolls, rents, or income to be had or levied therefrom,
412 and all franchises, rights, and privileges of the said parties of the first part of, in, to, or concerning the same; but nothing herein con-

tained shall be construed to prevent the parties of the first part from selling, hypothecating, or otherwise disposing of any surplus lands of the company not necessary to be retained for their roadway, depot-grounds, stations, not required for the construction or convenient use of their road, nor from collecting moneys due the company, or stock subscriptions, or otherwise, provided they shall dilligently proceed to collect and faithfully apply all such means to the construction and equipment of their said road.

To have and to hold said premises, and every part thereof, with the appurtenances, unto the said party of the second part, his successors in said trust, and assigns, upon the following trusts, that is to say: In case the said parties of the first part shall fail to pay the principal, or any part thereof, or any of the interest on any of said bonds at any time when the same may become due and payable, according to the tenor thereof when demanded, then, after sixty days from such default, upon request of the holder of such bond, the said party of the second part, his successors in said trust, or assigns, shall enter into and take possession of all and any part of said premises and property; and, as the attorney in fact or agent of the said parties of the first part, by himself or agents, or substitutes duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and additions thereto, and, after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of all said bonds remaining unpaid, or the said party of the s cond part, his successors in the said trust and asisgns, at his or their discretion may, or, on the written request of the holders of at least one-half of the bonds unpaid and unconverted into stock, shall, cause the said premises, or so much thereof as shall be necessary to pay and discharge the principal and interest of all such said bonds as may then be unpaid and unconverted as aforesaid, to be sold at public auction in the city of New Albany, in the State of Indiana, or in the city of New York, giving at least forty days' notice of the time, place, and terms of said sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of the cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which shall be a bar against
413 the parties of the first, their successors and assigns, and all persons claiming under them, of all right, interest, and claim in or to said premises, or any part thereof; and said trustee shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and shall restore the residue thereof to the parties of the first part; it being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension-laws by the said parties of the first part, nor any injunction or stay of proceedings, or any process be applied for or obtained by them to prevent such entry or sale as aforesaid. And the said parties of the first part hereby covenant, for the consideration aforesaid, to execute and deliver any further reasonable and necessary conveyance of the said premises, or any part thereof, to the said party of the second part, his successors in said trust and assigns, for more fully carrying into effect the object hereof, particularly for the conveyance of any property subsequently to the date hereof acquired by said parties of the first part, and comprehended in the description contained in the premises,

and the said parties of the first part hereby further covenant, as aforesaid, that the money borrowed for the purposes aforesaid, upon the security of the said bonds, shall be faithfully applied to the completion of that part of said road which lies between New Albany and Gosport, inclusive, and the purchase and transportation of iron for said road, and machinery and equipments for the same, and the expenses attending such loan and purchase, and that said iron so purchased shall be transported and used with due diligence in the construction and finishing of the above-described part of said railroad.

And it is hereby agreed, and these presents are upon this express condition, that on payment of the principal and interest of said bonds, or the conversion thereof into stock in manner aforesaid, the estate hereby granted to the said party of the second part shall be void, and the right to the premises and property hereby conveyed shall revert to and revest in the said parties of the first part without any acknowledgement of satisfaction, reconveyance, re-entry, or other act. And the parties of the first part hereby covenant that after the first day of July, one thousand eight hundred and fifty-three, one-fifth of the net earnings of that part of their railroad which lies between New Albany and Gosport shall be set apart as a sinking-fund for the redemption of said bonds, and faithfully applied to that purpose.

414 And it is further mutually agreed that the said party of the second part, his successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof; and shall not be responsible for the acts of any agent employed by him or them, where such agent is selected with reasonable discretion; and that said party of the second part, his successors in said trust or assigns, shall be entitled to receive proper compensation for every labor or service performed by him in the discharge of his trust, in case he shall be compelled to take possession of said premises, or any part thereof, or manage the same. And it is further mutually agreed that in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, right, interest, power, and control in the premises shall be divested, cease, and determine, and the same shall from thenceforth, for the purposes aforesaid, be vested in, and all and singular the trust and duties hereinbefore enumerated shall devolve upon, Charles E. Bill, of the city of New York, without any other or further assurance or conveyance of or for the same. And in case of the death, mental incapacity, or resignation of the said Charles E. Bill, after the trust thereby created shall have devolved upon him, all his estate, power, and control in the premises shall be divested, cease, and determine; and the same shall from thenceforth for the purpose aforesaid be vested in, and all and singular the trusts and duties hereinbefore enumerated shall devolve upon, James Montgomery, of New Albany, Indiana, without any other or further assurance or conveyance of or from the same. And in case of the death, mental incapacity, or resignation of the said James Montgomery, after the trust hereby created shall have devolved upon him, or in case the said Charles E. Bill and James Montgomery shall die before the cessation of the trust in the said Douw D. Williamson, and a vacancy in said trust shall continue for the space of thirty days, the holders of a majority of said bonds may apply to the Floyd circuit court, sitting at New Albany, in the State of Indiana, or any other court of competent jurisdiction in said State, to supply his place, and thereupon such new trustee shall become vested for the purpose aforesaid with all the rights and interest hereby conveyed or vested in the said party of the second part, without any further assurance or conveyance

for the same; but if the same shall be necessary, both or either of the parties hereto shall execute any necessary releases or conveyances for that purpose.

415 In witness whereof the parties of the first part have caused their corporate seal to be hereto affixed, and the same to be subscribed by their president, and countersigned by the secretary, and the party of the second part has set his hand and seal, the day and the year first-above written.

JAMES BROOKS, *President.*

GEORGE LYMAN, *Secretary.*

D. D. WILLIAMSON.

Exhibit B, referred to in complaint.—Mortgage.

The indenture, made the fourteenth day of February, one thousand eight hundred and fifty-two, between the New Albany and Salem Railroad Company, a corporation, duly constituted as such by the laws of the State of Indiana, of the first part, and Douw D. Williamson, of the city of New York, of the second part.

Whereas the parties of the first part, pursuant to the terms of the statutes of said State incorporating them, and other statutes amendatory thereto, are engaged in constructing that part of their railroad which lies between New Albany and Michigan City, inclusive, in the State aforesaid, being of the length of two hundred and eighty-five miles, with a branch from Gosport, in Owen County, to Indianapolis, being of the length of forty-three miles, making in all three hundred and twenty-eight miles, and for that purpose need, and have resolved to purchase and transport, iron rails and chairs and other necessary iron and machinery to equip the road, and also to raise money by loan for such purchase and transportation, and for such other purposes as the wants of the company may require on this part of their road, to an amount not exceeding two million three hundred and twenty-five thousand dollars; and in order to secure the payment therefor, or re-payment thereof, to execute certain bonds, not exceeding two thousand six hundred and fifty in number, two thousand of which bonds will be for one thousand dollars each, and six hundred and fifty of five hundred dollars each, bearing an interest of 8 per centum per annum, payable semi-annually, so far as regards security for the repayment thereof by these presents, notwithstanding the same may be issued at

416 different times, each of said bonds being authenticated by a certificate, signed by said party of the second part, and containing a clause permitting the holder thereof to exchange the same at par for shares of stock in said railroad company at any time previous to the first day of June, eighteen hundred and fifty-eight.

Now, therefore, this indenture witnesseth that the said parties of the first part, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to them, at the sealing and delivery hereof, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said party of the second part, and to his successors in the trust hereby created and assigned, all the following present and in future to be acquired property of the parties of the first part pertaining to that part of their road which lies between New Albany and Michigan City, and between Gosport and Indianapolis, that is to say, their road, made and to be made, including the right of way,

and land occupied thereby, together with the superstructure and tracks thereon, and all rails and other materials used thereon or procured therefor, inclusive of the iron rails purchased, or to be purchased, or paid for with the above-described bonds, or the money obtained therefor, and the machinery purchased with the same; bridges, viaducts, culverts, fences, depot-grounds, and buildings thereon, engines, tenders, cars, tools, materials, machinery, and all other personal property, right thereto or interest therein as aforesaid, together with the tolls, rents, or income to be had or levied therefrom, and all franchises, rights, and privileges of the said parties of the first part, of, on, to, or concerning the same. But nothing herein contained shall be construed to prevent the parties of the first part from selling, hypothecating, or otherwise disposing of any surplus lands of the company not necessary to be retained for their roadway, depot-grounds, stations, nor required for the construction or convenient use of their road; not from collecting moneys due the company, or stock-subscriptions, or otherwise, provided they shall diligently proceed to collect and faithfully apply all such means to the construction and equipment of their said road.

To have and to hold the said premises, and every part thereof, with the appurtenances, unto the said party of the second part, his successors in said trust and assigns, upon the following trusts, that is
417 to say: In case the said parties of the first part shall fail to pay the principal, or any part thereof, or any of the interest on said bonds at any time when the same may become due and payable according to the tenor thereof, when demanded, then after sixty days from such default, upon request of the holder of such bond, the said party of the second part, his successors in said trust or assigns, shall enter and take possession of all and any part of said premises and property; and as the attorney in fact or agent of the said parties of the first part, by himself or agents, or substitutes duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of all said bonds remaining unpaid, or the said party of the second part, his successors in said trust and assigns, at his or their discretion, may, or, on the written request of the holders of at least one-half of the bonds then unpaid and unconverted into stock, shall, cause the said premises, or so much thereof as shall be necessary to pay and discharge the principal and interest of all such said bonds as may then be unpaid and unconverted as aforesaid, to be sold at public auction, in the city of New Albany, in the State of Indiana, or in the city of New York, giving at least forty days' notice of the time, place, and terms of said sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of the cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right, interest, and claim in or to said premises, or any part thereof; and said trustee shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and shall restore the residue thereof to the parties of the first part; it being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor any injunction or stay of proceedings, or

any process be applied for or obtained by them to prevent such entry or sale as aforesaid.

And the said parties of the first part hereby covenant, for the consideration aforesaid, to execute and deliver any further reason-
418 able and necessary conveyance of the said premises, or any part thereof, to the said party of the second part, his successor in said trust and assigns, for more fully carrying into effect the objects hereof, particularly for the conveyance of any property subsequently to the date hereof acquired by said parties of the first part, and comprehended in the description contained in the premises. And the said parties of the first part hereby further covenant, as aforesaid, that the money borrowed for the purposes aforesaid, upon the security of the said bonds, shall be faithfully applied to the completion of that part of said road which lies between New Albany and Michigan City, and between Gosport and Indianapolis, inclusive, and the purchase and transportation of iron for said road, and machinery and equipments for the same, and the expenses attending such loan and purchase, and that said iron so purchased shall be transported and used with due diligence in the construction and finishing of the above-described part of said railroad. And it is hereby mutually agreed, and these presents are upon this express condition, that on payment of the principal and interest of said bonds, or the conversion thereof into stock in manner aforesaid, the estate hereby granted to the said party of the second part shall be void, and the right to the premises and property hereby conveyed shall revert to and revest in the said parties of the first part, without any acknowledgement of satisfaction, reconveyance, re-entry, or other act.

And it is further mutually agreed that the said party of the second part, his successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agent employed by him or them, where such agent is selected with reasonable discretion; and that said party of the second part, his successors in said trust or assigns, shall be entitled to receive proper compensation for every labor or service performed by him in the discharge of his trust, in case he shall be compelled to to take possession of said premises, or any part thereof, or manage the same. And it is further mutually agreed that in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, interest, power, and control in the premises shall be divested, cease, and determine, and the same shall thenceforth, for the purpose aforesaid, be vested in, and all and singular the trust and duties hereinbefore enumerated shall devolve upon, Charles E. Bill, of the city of New York, without any other or further assurance or con-
419 veyance of or for the same. And in case of the death, mental incapacity, or resignation of the said Charles E. Bill, after the trust thereby created shall have devolved upon him, all his estate, power, and control in the premises shall be divested, cease, and determine, and the same shall from thenceforth, for the purposes aforesaid, be vested in, and all and singular the trusts and duties herein enumerated shall devolve upon James Montgomery, of New Albany, Indiana, without any other or further assurance or conveyance of or for the same. And in case of the death, mental incapacity, or resignation of the said James Montgomery, after the trust hereby created shall have devolved upon him, or in case the said Charles E. Bill and James Montgomery shall die before the cessation of the trust in the said Douw D. Williamson, and a vacancy in said trust shall continue for the space of thirty days, the

holders of a majority of bonds may apply to the Floyd circuit court, sitting at New Albany, in the State of Indiana, or any court of competent jurisdiction in said State, to supply his place, and thereupon such new trustee shall become vested for the purpose aforesaid with all the rights and interest hereby convened or vested in the said party of the second part, without any further assurance or conveyance for the same; but if the same shall be necessary, both or either of the parties hereto shall execute any necessary releases or conveyances for that purpose.

In witness whereof the parties of the first part have caused their corporate seal to be affixed, and the same to be subscribed by their president, and countersigned by their secretary, and the party of the second part has set his hand and seal the day and year first above written.

JAMES BROOKS, *President.*

GEORGE LYMAN, *Secretary.*

D. D. WILLIAMSON.

Bond referred to in complaint as Exhibit C.

[Form of bond.]

"UNITED STATES OF AMERICA,
State of Indiana:

No. .] NEW ALBANY AND SALEM RAILROAD COMPANY. [$1,000.

The New Albany and Salem Railroad Company acknowledge said company to owe upon the sale of this bond to
420 one thousand dollars, which sum the said company promises to pay to the said , at the office of Farmers' Loan and Trust Company, in the city of New York, on the first day of April, in the year one thousand eight hundred
and also interest thereon, at the rate of 10 per cent. per annum, semi-annually, on the first day of each April and October from the date hereof, until the said principal sum shall be paid, on the presentation of the annexed interest-warrants at the office of said Farmers' Loan and Trust Company.

And the said company also agree to transfer to the holder hereof at any time before said principal sum shall fall due, where the holder shall elect to receive the same on the delivery of this obligation and the unpaid interest-warrants to the trustee named in the annexed certificate, or to his successor in the trust, in the city of New York, or to his secretary of said company, in the city of New Albany, twenty shares of fifty dollars each in the capital stock of said company in exchange for and satisfaction of this obligation, and all rights and benefits arising therefrom may be transferred by general or special endorsement or by delivery, as if the same were a note of hand, payable to bearer, and hereby waive all benefits from valuation or appraisement laws.

In testimony whereof the company have hereby affixed their corporate seal, and these presents to be subscribed by their president, this twenty-fifth day of February, 1851.

[SEAL.] JAMES BROOKS, *President.*

I, Donw D. Williamson, hereby certify that the New Albany and Salem Railroad Company have conveyed to me by deed bearing date the eighth day of February, 1851, all of that part of their road, with its

income and franchises, of about 112 71/100 miles, which lies between the city of New Albany and the town of Gosport, inclusive, and all the rights of the company pertaining thereto, in trust for the use and benefit of the holders of their obligations of similar tenor as the foregoing, issued and to be issued in an amount not exceeding in all five hundred thousand dollars, with power to take possession of, use, and sell the same, or any part thereof, in case of sixty days' default in paying the principal or interest of said obligations, or any of them, as by reference to said deed of trust, which I have caused to be recorded in the several counties in or through which said railroad is located, will more fully and
421 at large appear; and I certify that the foregoing is one of the of the obligations referred to and secured by said deed.

D. D. WILLIAMSON, *Trustee.*

Exhibit D, referred to in complaint.—Mortgage.

This indenture, made the third day of November, one thousand eight hundred and fifty-three, between the New Albany and Salem Railroad Company, a corporation duly constituted as such by the laws of the State of Indiana, of the first part, and Douw D. Williamson, of the city of New York, of the second part.

Whereas the parties of the first part, pursuant to the terms of the statute of said State incorporating them, and other statutes amendatory thereto, are engaged in constructing that part of their railroad which lies between New Albany and Michigan City, inclusive, in the State aforesaid, being of the length of two hundred and eighty-eight miles, with a branch from Gosport, in Owen County, to Indian*diana*napolis, being of the length of forty-three miles, making in all three hundred and twenty-eight miles, and for that purpose need, and have resolved to purchase and transport, iron rails and chairs, and other necessary iron and machinery to equip the road, and also to raise money by loan for such purposes and transportation, and for such other purposes as the wants of the company may require on this part of their road, to an amount not exceeding one million dollars, and in order to secure payment therefor, or repayment thereof, to execute certain bonds, not exceeding one thousand in number, for one thousand dollars each, bearing an interest of 7 per centum per annum, payable semi-annually in the city of New York, which bonds shall be on equality so far as regards security for the repayment thereof by these presents, notwithstanding the same may be issued at different times, each of said bonds being authenticated by a certificate signed by said company of the second part, and containing a clause permitting the holder thereof to exchange the same at par for shares of stock in said railroad company at any time previous to the first day of December, eighteen hundred and fifty-eight:

Now, therefore, this indenture witnesseth that the said parties of the first part, in order to secure the payment of said bonds and interest,
422 and in consideration of the sum of one dollar to them, at the sealing and delivery hereof, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said party of the second part, and to his successors in the trust hereby created and assigned, all the following, present and in future to be acquired property of the said parties of the first part, pertaining to that part of their road, which lies between New Albany and Michigan City, and between Gos-

port and Indianapolis, that is to say, their road, made and to be made, including the right of way and land occupied thereby, together with the superstructure and tracks thereon, and all rails and other materials used thereon or procured therefor, inclusive of the iron rails purchased, or to be purchased, or paid for with the above-described bonds, or the money obtained therefor, and the machinery purchased with the same: bridges, viaducts, culverts, fences, depot-grounds and buildings thereon, engines, tenders, cars, tools, materials, machinery, and all other personal property, right thereto, or interest therein, pertaining as aforesaid, together with the tolls, rents, or income to be had or levied therefrom, and all franchises, rights, and privileges of the said parties of the first part of, in, to, or concerning the same. But nothing herein contained shall be construed to prevent the parties of the first part from selling, hypothecating, or otherwise disposing of the surplus lands of the company not necessary to be retained for their roadway, depot-grounds, stations, not required for the construction or convenient use of their road; nor from collecting moneys due the company, or stock subscriptions, or otherwise, provided they shall diligently proceed to collect and faithfully apply all such means to the construction and equipment of their said road.

To have and to hold the said premises, and every part thereof with the appurtenances, unto the said party of the second part, his successors in said trust and assigns, upon the following trusts, that is to say: In case the said parties of the first part shall fail to pay the principal or any part thereof, or any of the interest on said bonds at any time when the same may become due and payable according to the tenor thereof, when demanded, then after sixty days from such default, upon request of the holder of such bond, the said party of the second part, his successors in said trust or assigns, shall enter into and take possession of all and any part of said premises and property; and as the
423 attorney in fact or agent of the said parties of the first part, by himself or agents, or substitutes duly constituted, have, use, and employ the same, making, from time to time, all needful repairs, alterations, and additions thereto; and, after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of said bonds remaining unpaid, or the said party of the second part, his successors in said trust and assigns, at his or their discretion, may, or, on the written request of the holders of at least one-half of the bonds then unpaid and unconverted into stock, shall, cause the said premises, or so much thereof as shall be necessary to pay and discharge the principal and interest of all such said bonds as may then be unpaid and unconverted as aforesaid, to be sold at public auction in the city of New Albany, in the State of Indiana, or in the city of New York, giving at least forty days' notice of the time, place, and terms of said sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of the cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee-simple for the same; which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right, interest, and claim in or to said premises, or any part thereof; and said trustee shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property, apply so much of the proceeds as may be necessary to the payment of such principal and interest due or unpaid on said bonds; and shall restore the residue thereof to the parties of the first part; it being hereby expressly understood that in no case shall

any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor any injunction or stay of proceedings, or any process be applied for or obtained by them to prevent such entry or sale as aforesaid.

And the said parties of the first part hereby covenant, for the consideration aforesaid, to execute and deliver any further reasonable and necessary conveyance of the said premises, or any part thereof, to the said party of the second part, his successors in said trust and assigns, for more fully carrying into effect the objects hereof, particularly for the conveyance of any property subsequently to the date hereof acquired by said parties of the first part, and comprehended in the description contained in the premises. And the said parties of the first part hereby further covenant, as aforesaid, that the money bor-
424 rowed for the purposes aforesaid, upon the security of the said bonds, shall be faithfully applied to the completion of that part of said road which lies between New Albany and Michigan City, and between Gosport and Indianapolis inclusive, and the purchase and transportation of iron for said road, and machinery and equipmen s for the same, and the expenses attending such loan and purchase; and that said iron so purchased shall be transported and used with due diligence in the construction and finishing of the above-described part of said railroad. And it is hereby mutually agreed, and these presents are upon this express condition, that at payment of the principal and interest of said bonds, or the conversion thereof into stock, in manner aforesaid, the estate hereby granted to the said party of the second part shall be void, and the right to the premises and property hereby conveyed shall revert to and revest in the said parties of the first part without any acknowledgment of satisfaction, reconveyance, re-entry, or other act.

And it is further mutually agreed, that the said party of the second part, his successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agent employed by him or them, where such agent is selected with reasonable discretion; and that said party of the second part, his successors in said trust or assigns, shall be entitled to receive proper compensation for every labor or service performed by him in the discharge of his trust, in case he shall be compelled to take possession of said premises or any part thereof, or manage the same. It is further mutually agreed that, in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, right, interest, power, and control in the premises shall be divested, cease, and determine; and the same shall from thenceforth, for the purposes aforesaid, be vested in, and all and singular the trust and duties hereinbefore enumerated shall devolve upon Charles E. Bill, of the city of New York, without any other or further assurance or conveyance of or for the same. And in case of the death, mental incapacity, or resignation of the said Charles E. Bill, after the trust thereby created shall have devolved upon him, all his estate, power, and control in the premises shall be divested, cease, and determine, and the same shall from thenceforth, for the purposes aforesaid, be vested in, and all and singular the trusts and duties hereinbefore enumerated shall devolve upon, James Montgomery, of New Albany, Indiana, without
425 any other or further assurance or conveyance of or for the same; and in case of the death, mental incapacity, or resignation of the said James Montgomery, after the trust hereby created shall have devolved upon him, or in case the said Charles E. Bill and James Montgomery shall die before the cessation of the trust in the said Douw D.

Williamson, and a vacancy in said trust shall continue for the space of thirty days, the holders of a majority of bonds may apply to the Floyd circuit court, sitting at New Albany, in the State of Indiana, or any other court of competent jurisdiction in said State, to supply his place, and thereupon such new trustee shall become vested, for the purposes aforesaid, with all the rights and interest hereby conveyed or vested in the said party of the second part, without any further assurance or conveyance for the same; but, if the same shall be necessary, both or either of the said parties hereto shall execute any necessary releases or conveyances for that purpose.

In witness whereof the parties of the first part have caused their corporate seal to be hereto affixed, and the same to be subscribed by their president and countersigned by their secretary, and the party of the second part has set his hand and seal the day and year first above written.

[SEAL.] JAMES BROOKS, *President.*

GEORGE LYMAN, *Secretary.*

D. D. WILLIAMSON. [SEAL.]

Signed, sealed, and delivered in presence of—
ROB'T C. BOYD.

STATE OF INDIANA,
Floyd County, ss:

Be it known that on this 9th day of November, A. D. 1853, before me, William A. Scribner, a notary public within and for the county aforesaid, duly commissioned and qualified, personally appeared the within-named George Lyman, who is well known to me as the secretary of the New Albany and Salem Railroad Company and the keeper of the seal of said company, and acknowledged that as the secretary of said company he signed his name and impressed the seal of said company to the foregoing instrument.

In witness whereof I have hereto set my name as said notary, and impressed my said notarial seal, at the city of New Albany, in the county and State aforesaid, on the day and year aforesaid.

W'M A. SCRIBNER,
Notary Public, Floyd County, Indiana.

426 No. 316.] RECORDER'S OFFICE, FLOYD COUNTY, INDIANA.

Filed for record Wednesday, November 9th, 1853, at 10½ o'clock a. m., and recorded in mortgage-record, vol. 1st, pages 163, 164, 166, 167, and 168.

SAMUEL V. OWEN,
Recorder Floyd County.

A true record.

Recorded November 23d, 1853, at 4 o'clock p. m.
SANFORD C. COX, *Recorder.*

THE STATE OF INDIANA,
Tippecanoe County, ss:

I, Darwin H. Hull, recorder in and for said county, do hereby certify that the foregoing is a true, full, and complete copy of the record of a mortgage executed by the New Albany and Salem Railroad Company to

D. D. Williamson, as appears of record in mortgage-record, vol. one, pages 225, 226, 227, 228, and 229, now on file in my said office.

Witness my hand and official seal this March 26th, 1868.

D. H. HULL, [SEAL.]
Recorder Tippecanoe County.

[5-c. U. S. r. stamp.]

Exhibit E referred to in complaint.—Mortgage.

This indenture, made the first day of February, A. D. 1855, between the New Albany and Salem Railroad Company, a corporation, duly constituted as such by the laws of the State of Indiana, of the first part, and Douw D. Williamson, of the city of New York, of the second part.

Whereas the parties of the first part, pursuant to the terms of the statute of said State incorporating them, and other statutes amendatory thereto, have constructed that part of their railroad which lies between New Albany and Michigan City, inclusive, in the State aforesaid, being of the length of 288 miles, and for the purpose of developing the business of the road, and making it productive, have resolved to relay a portion of the track and purchase additional machinery; and, also, to
427 raise money by loan for such purposes, and for such other purposes as the wants of the company may require, not exceeding one million dollars, and in order to secure payment therefor, or repayment thereof, to execute certain bonds, not exceeding eleven hundred and sixty in number, nine hundred of which bonds will be for one thousand dollars each, and one hundred and sixty of five hundred dollars each, and one hundred of two hundred dollars each, bearing an interest of 7 per centum per annum, payable semi-annually in the city of New York, which bonds shall be on equality so far as regards security for the repayment thereof, by these presents, notwithstanding the same may be issued at different times, each of said bonds being authenticated by a certificate signed by said party of the second part, and containing a clause permitting the holder thereof to exchange the same at par, for shares of stock in said railroad company, at any time previous to the first day of February, eighteen hundred and sixty.

Now, therefore, this indenture witnesseth that the said parties of the first part, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to them, at the sealing and delivering hereof, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said party of the second part, and to his successors in the trust hereby created and assigned, all the following, present and in future to be acquired property of the said parties of the first part, pertaining to their part of their road, which lies between New Albany and Michigan City, that is to say, their road, made and to be made, including the right of way, and land occupied thereby, together with the superstructure and tracks thereon, and all rails and other material used thereon or procured therefor, inclusive of the iron rails, purchased or to be purchased, or paid for with the above described bonds or the money obtained therefor, and the machinery purchased with the same; bridges viaducts, culverts, fences, depot-grounds and buildings thereon, engines, tenders, cars, tools, material, machinery, and all other personal property, right thereto, or trust therein pertaining as aforesaid, together with all tolls, rents, or income to be had or levied therefrom, and all franchises, rights, and privileges of the said parties

of the first part with or concerning the same; but nothing herein contained shall be construed to prevent the parties of the first part from selling, hypothecating or otherwise disposing of any surplus lands
428 of the company not necessary to be retained for their roadway, depot grounds, stations, or for the construction or convenient use of their road; nor from collecting moneys due the company, or stock subscriptions or otherwise, provided they shall diligently proceed to collect and faithfully apply all such means to the construction and equipment of their said road, and to such other purposes as the wants of the company may require.

To have and to hold the said premises as every part thereof, with the appurtenances, unto the said party of the second part, his successors in said trust and assigns, upon the following trust, that is to say: In case the said party of the first part shall fail to pay the principal or any part thereof or any of the interest on said bonds, at any time when the same may become due and payable according to the tenor thereof, when demanded, then, after sixty days from such default, upon request of the holders of such bonds, the said party of the second part, his successors in said trust or assigns, shall enter and take possession of all and every part of said premises and property, and as the attorney in fact or agent of the said parties of the first part, by himself or agent or substitutes, duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and additions thereto, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of all said bonds remaining unpaid; or the said party of the second part, his successors in said trust and assigns, at his or their discretion, may, on the written request of the holders of at least one-half of the bonds then unpaid and unconverted into stock, shall, cause the said premises, or so much thereof as shall be necessary to pay and discharge the principal and interest of such said bonds as may be unpaid and unconverted as aforesaid, to be sold at public auction, in the city of New Albany, in the State of Indiana, or in the city of New York, giving at least forty days' notice of the time, place, and terms of said sale and the specific property to be sold, by publishing the same in two newspapers of good circulation, in each of the cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance, in fee-simple of the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right, interest, and claim in or to the premises or any part thereof, and said trustee shall, after de-
429 ducting from the proceeds of such sale the costs and expenses thereof, and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and shall restore the residue thereof to the parties of the first part; it being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, or any injunction or stay of proceedings, or any process be applied for or obtained by them to prevent such an entry or sale aforesaid.

And the said parties of the first part hereby covenant, for the consideration aforesaid, to execute and deliver any further necessary and reasonable conveyance of the said premises, or any part thereof, to the said party of the second part, his successors in said trust and assigns, for more fully carrying into effect the objects hereof, particularly for the conveyance of any property subsequent to the date hereof acquired by said

parties of the first part, and comprehended in the description contained in the premises; and the said parties of the first hereby further covenant, as aforesaid, that the money borrowed for the purposes aforesaid, upon the security of the said bonds, shall be faithfully applied to the completion of that part of said road which lies between New Albany and Michigan City, and the purchase and transportation of iron for said road, and machinery and equipments for the same, and for such other purpose as the interests of said company require, and the expenses attending such loan and purchase, and that said iron and machinery so purchased shall be transported and used with due diligence in the furnishing and equipping the above-described part of said railroad.

And it is hereby mutually agreed, and these presents are upon this express condition, that on payment of the principal and interest of said bonds, or the conversion thereof into stock in the manner aforesaid, the estate hereby granted to the said party of the second part shall be void, and the right to the premises and the property hereby conveyed shall revert to and revest in the said parties of the first part without any acknowledgement of satisfaction, reconveyance, security, or other act; and it is further mutually agreed that the said party of the second part, his successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agents employed by him or them, when such agent is selected with reasonable discretion, and that said party of the
430 second part, his successors in said trust or assigns, shall be entitled to receive proper compensation for every labor or service performed by him in the discharge of his trust, in case he shall be compelled to take possession of said premises or any part thereof, or manage the same.

And it is further mutually agreed, that in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, right, interest, power, and control in the premises shall be divested, cease, and determine, and the same shall from thenceforth, for the purposes aforesaid, be vested in, and all and singular the trust and duties hereinbefore enumerated shall devolve upon, Charles E. Bill, of the city of New York, without any other or further assurance or conveyance of or for the same. And in case of the death, mental incapacity, or resignation of the said Charles E. Bill, after the trust hereby created shall have devolved upon him, all his estate, power, and control in the premises shall be divested, cease and determine; and the same shall from thenceforth, for the purposes aforesaid, be vested in, and all and singular the trusts and duties hereinbefore enumerated shall devolve upon, James Montgomery, of the city of New Albany, in the State of Indiana, without any other or further assurance or conveyance of or for the same. And in case of the death, mental incapacity, or resignation of the said James Montgomery, after the trust hereby created shall have devolved upon him, in case the said Charles E. Bill and James Montgomery shall die before the cessation of the trust in the said Douw D. Williamson, and a vacancy in said trust shall continue for the space of thirty days, the holders of the majority of said bonds may apply to the Floyd circuit court, sitting at New Albany, in the State of Indiana, or any other court of competent jurisdiction in said State, to supply the place, and thereupon such new trustee shall become vested, for the purposes aforesaid, with all the rights and interest hereby conveyed or vested in the said party of the second part, without any further assurance or conveyance for the same; but if the same shall be necessary, both or either of the parties hereto shall execute any necessary releases or conveyances for that purpose.

In witness whereof the parties of the first part have caused their corporate seal to be affixed hereto, and the same to be subscribed by
431 their president and countersigned by their secretary, and the party of the second part has set his hand and seal the day and year first above written.

[SEAL.] JAMES BROOKS, *President.*
D. D. WILLIAMSON. [SEAL.]

GEORGE LYMAN, *Secretary.*

Signed, sealed, and delivered in presence of—
ROB'T C. BOYD.

STATE OF INDIANA, *Floyd County:*

Be it known, that on this 10th day of February, 1855, before W'm W. Tuttle, a notary public in and for the county aforesaid, duly commissioned and qualified, personally appeared the above-named George Lyman, who is well known to me as the secretary of the New Albany and Salem Railroad Company, and the keeper of the seal of said company, and acknowledged that as the secretary of said company he signed his name and impressed the seal, as said, to the foregoing instrument.

In testimony whereof I have hereto subscribed my name and impressed my notarial seal, at the city of New Albany, the day and year above written.

W'M W. TUTTLE,
Notary Public.

A true record.

Recorded February 24th, 1855, at 5 o'clock p. m.
JOSEPH YUNDT, *Recorder.*

Exhibit F referred to in complaint.—Mortgage.

This indenture, made this 21st of December, 1856, by the New Albany and Salem Railroad Company, a corporation organized by virtue of the laws of the State of Indiana, of the first part, and Douw D. Williamson, esq., of the city of New York, of the second part, witnesseth, that whereas the party of the first part is now indebted in a considerable sum for labor, materials, and machinery for her road, which she is desirous to pay, and portions of her road are not yet completed, and she is not yet possessed of a sufficient number of locomotives and cars to do
the business of her road, and desirous to procure means to fully
432 complete the same, and to supply the locomotive and cars requisite to its business, and the party of the first part desire to make a loan of $500,000 by issuing eight hundred bonds, in the sum of $500 each, and one thousand bonds in the sum of $100 each, bearing interest at the rate of 10 per centum per annum, which interest shall be payable at the office of the Farmers' Loan and Trust Company, in the city of New York, on the 1st of June and December in each year, and the principal shall be payable at the same place, on the 1st of December, 1860, the proceeds of which loan are to be applied to the purposes aforesaid, and to the payment of existing liabilities, which bonds shall be in the form following, to wit:

UNITED STATES OF AMERICA, *State of Indiana.*

No. .] *Income bond.* [$500

NEW ALBANY AND SALEM RAILROAD COMPANY.

The New Albany and Salem Railroad Company acknowledge themselves to owe to , or bearer, five hundred dollars, which said company promise to pay to said , or holder hereof, at the office of the Farmers' Loan and Trust Company, in the city of New York, on the first day of December, in the year 1860, and interest thereon at the rate of 10 per cent. per annum, semi-annually on the first days of June and December, ensuing the date hereof, until the said principal sum shall be paid, on presentation of the annexed interest-warrants. This bond is issued with others, amounting in all to five hundred thousand dollars, for the purpose of discharging existing liabilities of the company, and for finishing and procuring additional equipments for the road. For the payment of the principal and interest of the whole series the entire net income of the company is irrevocably pledged.

In testimony whereof the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and secretary, this first day of December, 1855.

JAMES BROOKS, *President.*

GEO. LYMAN, *Secretary.*

I, Douw D. Williamson, hereby certify that the foregoing bond is one of a series of $500,000 included in a mortgage on the entire
433 personal property of the New Albany and Salem Railroad Company, and executed to me as trustee. Dated December 21st, 1855.

[SEAL.] DOUW D. WILLIAMSON, *Trustee.*

Income-bonds.

Warrant for twenty-five dollars, being half-yearly interest on income-bond No. of the New Albany and Salem Railroad Company, payable at the office of the Farmers' Loan and Trust Company, in the city of New York.

June 1st, 186 .

JAMES BROOKS,
President.

By W'M. G. COOPER.

$25.

Income-bonds.

Warrant for twenty-five dollars, being half yearly interest on income-bond No. of the New Albany and Salem Railroad Company, payable at the office of the Farmers' Loan and Trust Company, in the city of New York.

December 1st, 186 .

JAMES BROOKS,
President.

By W'M. G. COOPER.

$25.

And the party of the first part proposes to mortgage all her locomotives, cars, tools, machinery, cross-ties not laid in the road, wood delivered on the line of the road, and all materials provided for the road, and all other personal property belonging to her, to secure the payment of said bonds, and all interest to accrue thereon, and to pledge and appropriate all the net income of the road to the payment of the same. Therefore, in consideration of the matters aforesaid, and of one dollar in hand paid to the party of the first part by said Williamson the party of the first part hereby gives, grants, bargains, sells, and conveys to said Williamson all her locomotives, passenger-cars, freight-cars, baggage-cars, and hand-cars, of whatever kind, all her engines, lathes, machinery, tools, and materials of whatever kind in her machine and

other shops, or whatever other place, all her cross-ties not laid in her road, all her wood delivered along the line of her road, and all her other personal property of whatever kind provided for or used in connection with her road; to have and to hold said granted property to said Williamson, his successors and assigns, forever, in trust.

That if the party of the first part shall for sixty days fail to pay the principal, or any part of it, or any of the interest of any of the said bonds after the same shall be due and payable, and after a demand
434 of such payment, said Williamson, his successors or assigns, shall have authority, at the request of the holders of at least one-half of said bonds, to take possession of all or any of said granted property in person or by any agent or agents duly authorized by him or them, and have, use, and employ the same in and about the business of the said road, making from time to time all needful repairs, alterations, and additions thereto; said Williamson, his successors or assigns, shall at their descretion, or at the request of at least one-half of said bonds then unpaid, and after twenty days' publication thereof in three newspapers published in the vicinity of the place of sale, sell all or any of said granted property at public auction, without benefit *n* of any appraisement law of the State of Indiana, and apply the proceeds from such sale towards the payment of all said bonds and the interest thereon then due and unpaid, after first paying the expenses of such sale and of the management of said property so granted as aforesaid.

And until the party of the first part shall be in default by failing to pay all or some of the said bonds or of the interest thereon in the manner, and for the time aforesaid, or until the party of the first part shall suffer all or any of said granted property to be taken by virtue of any writ of attachment or execution issued against the party of the first part, the party of the first part shall have possession and use of all of said granted property, but on or at any time after such default in paying, or on or at any time after any of said granted property, being taken by virtue of any such writ, the party of the second part shall be entitled to take immediate possession of the same property, and to hold the same or dispose of it for the purpose of the trust hereby created, but the party of the second part shall not at any time take possession of or sell any more of said granted property than shall be reasonably sufficient to satisfy the bonds and interest then due and unpaid, and the expenses of said trust, or any more than shall be sufficient to be taken under any such writ.

And the said party of the first part covenant with said Williamson, his successors and assigns, to execute and deliver any further reasonable and necessary assurances of the said granted property, or any part thereof, or of any other personal property which she may provide or be possessed of in the place of or in addition to that granted by these presents to said Williamson, his successors and assigns in trust, for more effectually securing the said bonds and interest thereon.

And the party of the first part covenant that the proceeds of
435 the loan proposed as aforesaid shall be faithfully applied towards paying her floating debt before stated, her other existing liabilities, and the further completion of her road.

And it is mutually agreed, and these presents are upon this express condition, that on the payment of the principal and interest of all of said bonds, and of the expenses of the trust hereby created, all the property hereby granted and which shall not have been sold in the due execution of said trust shall be re-invested in the party of the first part, and all interest of said Williamson, his successors and assigns, therein

shall wholly cease and be void without any reconveyance or other act.

And it is further mutually agreed between the parties hereto that said Williamson, his successors and assigns, shall be respectively accountable for the want of reasonable care and diligence only in the execution of this trust, and shall not be responsible for the default or misconduct of any agent employed by them, where such agent has been selected with reasonable caution and discretion. And said Williamson, his successors and assigns, shall be entitled to receive a fair and reasonable compensation for every service performed by them in person, or by others under them, in the due execution of this trust.

And it is further mutually agreed that in case of the death, resignation, or incapacity of said Williamson, all the title to said granted property, and all power and control over the same, vested by these presents in the said Williamson, shall then cease in him, and shall be vested in such person as the Floyd circuit court in term time or the judge thereof in vacation shall appoint as such trustee, who shall have all the title to the said granted property and all the power of control over it, which is by these presents granted to said Williamson.

In witness whereof the party of the first part have caused her corporate seal to be affixed to and her president to sign and her secretary to countersigned these presents this 21st day of December, 1856.

[SEAL.] JAMES BROOKS,
President.

GEORGE LYMAN,
Secretary.

STATE OF INDIANA, *Floyd County, ss:*

Before me, a notary public in and for said county, personally
436 appeared James Brooks, president of the New Albany and Salem Railroad Company, and acknowledged that he executed the foregoing instrument for the purposes therein contained.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, at New Albany, this 13th day of January, 1857.

[SEAL.] W. W. TUTTLE,
Notary Public.

A true record.

Recorded January 16th, 1857, at 9 o'clock a. m.

JOSEPH YUNDT,
Recorder
P'r Z. M. P. HAND, *Dep.*

THE STATE OF INDIANA,
Tippecanoe County, ss:

I, Darwin H. Hull, recorder in and for said county, do hereby certify that the foregoing is a true, full, and complete copy of the record of a mortgage executed by the New Albany and Salem Railroad Company to D. D. Williamson, as appears of record in mortgage-record, volume number three, pages 27, 28, and 29, now on file in my said office.

In testimony whereof I hereunto subscribe name, and affix my official seal, this March 26th, 1868.

D. H. HULL, [SEAL.]
Recorder Tippecanoe County.

[5c. U. S. r. stamp.]

And afterwards, to wit, at a term of the court of common pleas of the county of White, in the State of Indiana, begun and held at the court-house, in the town of Monticello, in said county, on the 2d Monday of September, 1868, it being the 14th day of said month, said term continuing from day to day until Tuesday, the 8th judicial day of said term, it being the 22d day of September, 1868, the following proceedings were had in said cause, to wit:

Order of court.

White common pleas court.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

Now, on this 22d day of September, 1868, the plaintiff comes by Henry Crawford, and Chase & Wilstach, his attorneys and shows
437 to the court that the said Louisville, New Albany and Chicago Railroad Company has been duly served with process more than ten days before the first day of the present term of this court, and has also been duly served with notice of the motion for the appointment of a receiver for the property, effects, credits, and franchises of the said railroad company, and that the said motion would be made at this time. And the said motion for such receiver being now made in pursuance of said notice, and the affidavits filed and produced in behalf of the plaintiff upon said motion for a receiver being read and considered by the court, which affidavits read as follows, viz:

Affidavit of Crawford in support of motion for receiver.

White common pleas court.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, &c.

Henry Crawford, upon his oath, says he is a resident of White County, Indiana; that he is now and for the past ten yeas has been well acquainted with the business and financial condition of the Louisville, New Albany and Chicago Railroad Company, and that the said corporation is utterly insolvent and unable to pay its debts in the due course of business; that all of its line of railway, as described in the complaint, with all its appurtenances and franchises, is covered by five several mortgages to said Williamson, and is wholly insufficient to pay and satisfy the debts secured by the said mortgages, and that interest for over eight years remains unpaid and due upon the said mortgage debt.

HENRY CRAWFORD.

STATE OF INDIANA, *White County, ss:*

Subscribed and sworn to in open court this 21st day of September, 1868.

DAN'L D. DALE,
Clerk C. P. C., W. Co.

438 *Affidavit of H. W. Chase in support of motion, &c.*

White common pleas court, September term, 1868.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY, AND CHICAGO Railroad Company, &c.

Hiram W. Chase, upon his oath, says he is a resident of Tippecanoe County, Indiana; that he is now and for the last ten years has been well acquainted with the business and financial condition of the Louisville, New Albany and Chicago Railroad Company, and that the said corporation is utterly insolvent, and unable to pay its debts in the due course of business; that all of its line of railway, as described in the complaint, with all its appurtenances and franchises, is covered by five several mortgages to said Williamson, and is wholly insufficient to pay and satisfy the debts secured by the mortgages, and that interest for over eight years remains unpaid and due upon the said mortgage debt.

HIRAM W. CHASE.

Subscribed and sworn to in open court September 21st, 1868.
DAN'L D. DALE,
Clerk C. P. C., W. Co.

And it appearing to the satisfaction of the court from the said affidavits that said Louisville, New Albany and Chicago Railroad Company is insolvent and unable to pay its just debts and liabilties, and that the entire property, credits, income, and franchises of the said corporation is mortgaged and pledged to the said Douw D. Williamson, as a trustee, for the nse and benefit of the bond-creditors of the said corporation, and that the said mortgaged property is not sufficient to satisfy the debts and liabilities secured by the said mortgages to said Williamson; and the said corporation, although duly served with notice of said motion, show no reason, in opposition to the said affidavits in the matters therein contained, why the motion of the said plaintiff should not be granted, and a receiver be appointed in accordance with the prayer of the complaint: It is therefore considered and adjudged by the court
439 that upon the showing of the complaint in that behalf, as well as by the default of the said corporation, the said motion of the plaintiff for a receiver of the property, credits, and franchises of the Louisville, New Albany and Chicago Railroad Company be, and the same is now, granted under the stipulations hereinafter set out.

And the court being now cited by the plaintiff upon the recommendation of a majority of the bondholders, secured by the first and second mortgages upon the line of the railroad mentioned in the complaint to James F. Joy as the proper and suitable person to be appointed such receiver as aforesaid. It is by the court ordered that the said James F. Joy be, and he is hereby, appointed receiver of the property, credits, and franchises, of the Louisville, New Albany, and Chicago Railroad Company upon taking and filing in this court his oath to faithfully perform the duties of his said trust and his undertakings as required by law.

And thereupon the said James F. Joy files in open court an affidavit, by him subscribed, conditioned that he will faithfully perform the duties

of his said trust as such receiver, which oath of office is in the words following, viz:

Oath of receiver.

White common pleas court.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

James F. Joy, upon his oath, says that he will faithfully perform the duties of receiver of the Louisville, New Albany and Chicago Railroad Company, as appointed in this action, and will abide by and obey the orders of the court herein.

JAMES F. JOY.

STATE OF ILLINOIS,
Cook County, ss;

Subscribed and sworn to before me, a notary public in and for said State and county, this 11th day of September, 1868. Witness my hand and official seal.

CHARLES M. STURGIS. [SEAL.]
A Notary Public within and for the City of Chicago,
440 *in the State and County aforesaid.*

And at the same time said James F. Joy further tenders his undertaking, with sureties, which undertaking reads as follows, viz:

Bond of receiver.

White common pleas court.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

We, James F. Joy, as principal, and Henry Crawford, Hiram W. Chase, and Martin L. Pierce, as sureties, hereby undertake that the said James F. Joy shall faithfully discharge the duties of receiver of the Louisville, New Albany, and Chicago Railroad Company, in the above-entitled action, and obey all the orders of the court therein, and this undertaking is made payable to the State of Indiana for the use and benefit of any and all persons who are, or may be hereafter, interested in, or affected by the acts of said receiver.

JAMES F. JOY.
HENRY CRAWFORD.
HIRAM W. CHASE.
M. L. PIERCE.

And the court receive and accept of said oath of office, and of the said undertaking and of the sureties thereupon, and order that the said originals of said oath of office and said undertaking remain on file in this action for the use, benefit, and behoof of all and every person interested in the property of said railroad company.

And the said James F. Joy, being such receiver as aforesaid, and having been now fully qualified according to law, is now fully authorized and required by the court to forthwith take into possession and control, as the officer of this court, and the same to hold and administer until discharged by the further order of this court, in this action, all and singular the property of the said Louisville, New Albany and Chicago Railroad Company, consisting of a line of railroad running from New Albany, in the county of Floyd, through the counties of Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippe-
441 canoe, White, Pulaski, Starke, and La Porte to Michigan City. The said line of roads being of the length of 288 miles, or thereabouts; including, also, the right of way and land occupied thereby, the superstructure and *and* tracks thereupon, depot-grounds and buildings, machine-shops, water-tanks, wood-sheds, bridges, culverts, fences, switches, iron, engines, cars, machinery, wood, tools, materials of all and every kind whatsoever affixed or appurtenant to the said line of railroad aforesaid, and the rights, privileges, and franchises; to operate, maintain, and control the same under the original charter of the said railroad company, and the several amendments thereto. And also the said receiver is further empowered, authorized, and required to forthwith take into his possession all and singular the real and personal property of all and every kind, character, and description whatsoever, whether held in possession or remainder, not embraced in the description of said line of railway, and its appurtenances, and all and singular the notes, accounts, and choses in action to which the said railroad company is in any way entitled in law or in equity; and the said receiver is also required and authorized to take into his possession and control all and singular of the books of record and accounts, and all papers belonging to the said railroad company and used for the purpose of stating the business of said corporation, all and singular of which property, credits, and franchises are to be held by the said receiver pending this litigation, who shall, respecting the said property, credits, and franchises, obey such orders and directions as he may from time to time receive from this court in relation to his said trust, and shall further account for and pay or deliver over as he may be thereto directed by the court, all the monies, property and effects of the company, which shall come into his hands as such receiver.

And the said Louisville, New Albany and Chicago Railroad Company, and all and every of her officers, agents, or employés, including her president, directors, secretary, superintendents, agents, engineers, conductors, or other servants, and all and every person having now in their or his possession or control any part of the said line of railway or its appurtenances, more particularly hereinbefore described, or any part of its real or personal property, rights, choses in action, money, or books of account, shall each and every of them forthwith, upon the request and demand of the receiver or his agents or attorneys, disclose and deliver over to the said receiver all and every part of the property of said
442 company or its choses in action in their possession or within their power or under their control, or in the possession, within the power, or under the control of either of them.

And it is further ordered that in case the said railroad company, or any of her officers, attorneys, agents, or employés, or any person in possession or control of any part of the property of the said railroad company, shall, notwithstanding this order, and the demand of the said receiver, or his agent or attorney, refuse or neglect to deliver up the pos-

session and control of such part of the property of the said railroad company as may be in his or their possession or control, then, upon an affidavit of the said receiver, or his agent or attorney, being filed in this court, disclosing such facts, and the name of the person or persons so refusing to deliver up possession of the property of the said railroad company, the clerk of this court shall at once issue an attachment under the seal of this court against such person or persons, directed to the sheriff of the county where such person or persons may be found, and returnable to the next term of this court, bailable in the sum of one thousand dollars, to answer to this court for a contempt. And the said receiver is further empowered, in case of any such refusal, to deliver up possession of any of the property of the said railroad company, and upon his filing an affidavit disclosing such facts, to sue out of this court a writ of assistance, signed by the clerk and sealed with the seal of this court, and directed to the sheriff of any county or counties of the State where such refusal may occur, commanding such sheriff to forthwith put the said receiver into possession of such part of the property of the said railroad company as may be wrongly withheld from him.

And it is further ordered that, until the further order and direction of this court in the premises, the said James F. Joy, as such receiver, as aforesaid, shall be, and he is hereby, authorized and empowered to have and to hold all and singular the real, and personal, and mixed property of the said railroad company, and all the rights, credits, and franchises in which it has any interest whatever, free and clear from the claim, occupancy, or interposition of any other person whatsoever, and to maintain, operate, and control the line of railroad from New Albany to Michigan City, under and according to the original charter of said corporation and the amendments thereto, and to receive all and singular the rents, tolls, and income which may accrue from the oper-
443 ation of the said line of railroad; and to that end, and for the purpose of carrying on the usual business of such line of railway, in receiving and transporting passengers, freight, express goods, and mails of the United States, the said Jay, as such receiver, as aforesaid, shall have the power and authority to appoint and employ any and all such attorneys, clerks, agents, superintendents, conductors, engineers, and other employés as in his judgment may be necessary for the convenient and proper management of said property entrusted to him, and the due and legal execution of his said trust, and to stipulate with each and every of such agents, clerks, superintendents, conductors, engineers, and other employés, for the payment to them severally out of the funds which may be paid into his hands as receiver of such reasonable compensation as may be agreed upon by said receiver, and the said attorney, or agent, or employé. And the said Joy as such receiver, as aforesaid, shall, in the discharge of his said trust, have the authority to give to any such attorney, or agent, or employé, an appointment in writing, specifying the duties and powers of the said agent or employé, the length of his term of service under such receiver, and the compensation agreed upon.

And the said receiver shall have full right and authority to accept from any such agent or employé a bond, signed by such agent or employé, with sureties as may be satisfactory to such receiver, conditioned that such agent or employé will faithfully perform his duties as such agent, and fully account for and pay over to the receiver all moneys which may come into his hands as such agent or employé.

And the said receiver shall have full authority at any time, and summarily, to discontinue the service, or suspend or discharge any or all of

the superintendents, agents, or employés by him appointed, and to select and place others in their stead.

And the said receiver shall have the full power and authority to such agents and employés, and in such manner as may by him be deemed most advantageous to his trust-estate, to use and employ the said line of railroad, and the engines, cars, machinery, and property connected therewith, and appurtenances thereto, in as full and complete a manner in every respect as the said railroad company, under her said charter and the laws of Indiana, had the power and authority to do; and to that end the said receiver shall have the power to make contracts for the transportation of passengers and freight, express goods and mails, and
444 to fix the rates for the carriage of the same, and to make running arrangements with such other railroads as connect with the said Louisville, New Albany and Chicago Railroad Company, and as the said last-named company have been in the habit of having running arrangements with, as in the judgment of said receiver may be most advantageous for the interest of the property herewith entrusted to him.

And after the taking possession of the said property of the said railroad corporation, the said receiver shall have the exclusive power and authority by himself, and his duly-constituted agents, to manage, hold, and enjoy the said property, and each and every part thereof, and to receive, receipt for, and hold, under the order of the court, all and singular the tolls, rents, and income that may hereafter accrue by reason of the operation of said railroad, and all the moneys that may be paid into his hands, as receiver, in consequence of any debt now due and owing to the said railroad company, or that he may receive by reason of the sale of any property of said company hereafter ordered to be sold.

And the said receiver is further authorized to proceed, in such manner and at such time as he may deem expedient, to collect all and singular the notes, accounts, and choses in action of every kind which may now be justly due and owing to the said Louisville, New Albany and Chicago Railroad Company, to prosecute all suits now pending in behalf of said company, and if the said receiver shall in any case deem it expedient to effect a compromise with any debtor of the said corporation, he shall have full power so to do.

And out of the moneys which may come into the hands of such receiver by reason of the operation of the said railroad, the collection of debts, or the sale of property, the said receiver is hereby fully authorized, without any special order of the court as to the particular demand, to pay and satisfy the following classes of claims and expenses:

1. The necessary current expenses carrying out the duties of his trust, including wages of all the operatives, agents, attorneys, and officers employed by the said receiver in operating the said line of railroad, or in and about the execution of his trust, the purchase-money for all such engines, cars, ties, wood, iron, machinery, tools, and materials which are necessary, to the judgement of the receiver, for the convenient and proper use and management of said road, all of which necessary supplies, and repairs and renewals the said receiver is specially authorized hereby to contract for and purchase, to the end that said railroad may be kept in an efficient state.

445 2. All debts now due and owing by the said railroad company for labor or services rendered in operating the said railroad within the last three months, and for all engines, iron, wood, supplies, cars, or other property purchased under the order of Douw D. Williamson, as the agent of the bondholders of the said railroad, within the said time for the use of the company.

3. All the legal taxes and assessments, county, township, State, and Federal, which may now exist against the property of the said railroad company, or may hereafter be assessed and levied upon the same, or may rise by virtue of the business and receipts of said company, all premiums for insurances on the depots and buildings, and machinery of said company, and all other legal costs and expenses which may arise out of litigation, begun or defended by the said receiver in the necessary discharge of his duties.

4. All liabilities now due from said railroad company, or which may hereafter be from time to time incurred by reason of animals killed by the engines or cars upon the line of said road, and the said receiver is hereby authorized to settle and compromise any and all such claims upon such terms as he may deem most expedient. And the said receiver is further authorized to appear in and defend all suits which may be pending at the date of his appointment against the said Louisville, New Albany and Chicago Railroad Company in any court, or for any cause whatsoever, in all respects as fully as the said corporation itself could appear and defend.

And the said receiver is further empowered, in case of emergency, to bring all such suits and proceedings in courts of proper jurisdiction as may be by him thought necessary to preserve and defend the property and trusts in his possession, in any such case reporting his action to the court at its next succeeding term.

And the said receiver is hereby instructed to open and keep proper books of account, showing the operation of his trust, and, at each regular term of this court succeeding the present, shall present and file in this court his accounts-current, stating the receipts by him as receiver, and the payments by him made, and as to the said receiver this action is continued, with liberty for him to apply to this court by petition at any time for such further instructions in relation to his said trust as he may from time to time desire.

And afterwards, to wit, on the 3d day of November, 1868, Douw D. Williamson, by Crawford, his attorney, filed in the office of the clerk of the court of common pleas of White County, Indiana,
446 his affidavit for publication against Selah Chamberlain, which affidavit is in the words and figures following, to wit:

Affidavit for publication.

White common pleas court.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, Selah Chamberlain, Lazarus B. Wilson and others.

Henry Crawford, upon his oath, says that he is a disinterested person in the above-entitled action, and that a cause of action exists therein in favor of the plaintiff and against Selah Chamberlain, in relation to real estate, and that the said Chamberlain is not a resident of the State of Indiana.

HENRY CRAWFORD.

STATE OF INDIANA, *White County, ss:*

Subscribed and sworn to before me, this 2d day of November, 1868. Witness my hand and official seal.

T. B. DAVIS,
Notary Public.

And afterwards, to wit, at a term of the court of common pleas of White County, in the State of Indiana, begun and held at the court-house in Monticello, in said county, on the second Monday of January, 1869—present, the honorable Bernard F. Schermerhorn, sole judge of said court; said term being held in pursuance of law, on the 1st judicial day thereof, it being the 11th day of January, 1869, the following proceedings were had, in the above-entitled cause, to wit:

447 *Order.*

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, et al.

Comes the plaintiff, by Crawford and Chase & Wilstach, his attorneys, and, on their motion, this cause is dismissed as to the defendants, Hiram Mathew, Lazarus B. Wilson, John T. Huff, Eli Heidleberger, and Abraham Leopold as per written dismissal filed, which reads as follows, to wit:

Motion to dismiss as to Hiram Mathew et al.

STATE OF INDIANA, *White County, ss:*

In the common pleas court, January term, 1869.

DOUWD D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Co., James M. Rawlins, Morris McDonald, Hiram Mathew, Lazarus B. Wilson, John T. Huff, Selah Chamberlain, Eli Heidleberger, Abraham Leopold, and others. — Complaint to foreclose mortgage, &c.

The plaintiff hereby dismisses this cause as against the defendants, Hiram Mathew, Lazarus B. Wilson, John T. Huff, Eli Heidleberger, and Abraham Leopold.

CRAWFORD, AND CHASE & WILSTACH,
Attorneys for Plaintiff.

It is therefore considered by the court that this cause be dismissed as to the said defendants, named above, and that said defendants recover of the plaintiff their costs herein expended.

448 And afterwards, to wit, on the 2d judicial day of the term last aforesaid, it being the 12th day of January, 1869, the following proceedings were had in said cause, to wit:

Order.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al.

Comes the defendant, The Louisville, New Albany and Chicago Railroad Company, by W. C. Wilson and Huff & Langdon, her attorneys, and files her separate demurrer to each paragraph of the complaint herein, which demurrer is in the words and figures following, to wit:

Demurrer.

White common pleas, January term, 1869.

THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, (impleaded with others,)
ads.
DOUW D. WILLIAMSON.

The defendant, The Louisville, New Albany and Chicago Railroad Company, demurs separately to each of the paragraphs of the complaint herein, because said several paragraphs do not, nor does either of them, contain facts sufficient to constitute a cause of action.

W. C. WILSON, AND HUFF & LANGDON,
Attorneys for L., N. A. & C. R. R. Co.

And the plaintiff, by counsel, now moves the court on affidavit filed in these words:

449 *Motion in reference to above.*

STATE OF INDIANA, *White County, ss:*

In the White common pleas court, January term, 1869.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, and others.
Complaint to foreclose mortgage.

The plaintiff moves the court to require Messrs. Wilson, Huff, and Langdon, who assumes to appear as attorneys for the Louisville, New Albany and Chicago Railroad Company, one of the defendants in the above cause, to produce and prove to the court the authority under which they appear as such attorneys.

CRAWFORD, AND CHASE & WILSTACH,
Attorneys for Plaintiff.

Affidavit of Chase in support of motion.

Hiram W. Chase, being duly sworn, on his oath says that the plaintiff in the above cause is at present absent from the State of Indiana; that the affiant is one of his attorneys, and that Messrs. Wilson and Huff, two of the attorneys who assume to appear for the Louisville, New

Albany and Chicago Railroad Company, have this day announced in open court that they have not been employed by the president or directors of said company, but have been requested by some stockholders of the company to appear in this suit and defend in the name of the company. Whereof affiant says that he believes said attorneys are not authorized to appear as attorneys for said Louisville, New Albany and Chicago Railroad Company, in this cause.

HIRAM W. CHASE.

Subscribed and sworn to in open court, this 12th day of January, 1869.

DAN'L D. DALE, *Clerk.*

450 To require of said attorneys Messrs. W. C. Wilson, and Huff and Langdon to produce their authority for entering an appearance for said company.

Which motion the court take under advisement until a future day of this term. And comes now John T. Huff, by his counsel, and moves the court to be re-instated a party defendant therein, and files his written motion in these words:

Motion of John T. Huff, &c.

STATE OF INDIANA, *White County, ss:*

White common pleas, January term, 1869.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, and others.

John T. Huff, being sworn, says he is a judgment creditor of the said company, and as is shown by the transcript herewith filed, marked B, and made part of this affidavit; that as such creditor he is interested in the subject-matter of the above-named cause, and in the accounts to be taken therein. Hence he prays that he be re-instated as a party defendant in said cause.

JOHN T. HUFF.

Subscribed and sworn to this 12th day of January, 1869, before me, a notary public of said county of White.

Witness my hand and notary seal, at Monticello, in said county.

ROBERT GREGORY, [SEAL.]
Notary Public.

Exhibit B—Filed with John T. Huff's motion to be re-instated.

THE STATE OF INDIANA, *Tippecanoe County, ss:*

451 Tippecanoe circuit court, October term, 1857. Friday the 23d judicial day of said term, November 6, 1857.

Present, the Honorable Charles H. Test, judge of said court.

JOHN T. HUFF, GENEVIERE HUFF, AND SAMUEL D. HUFF, IONIA HUFF, AND ESIDONIA HUFF, by Timothy Dame, (their next friend,) *vs.* NEW ALBANY AND SALEM RAILROAD COMPANY. } Complaint.

Comes said plaintiffs by Pettit, Huff, Baird, and La Rue and Behm, their attorneys, and the defendant also comes by McDonald and Chase and Wilstach, her attorneys, and the court, after hearing the argument of counsel, and being fully advised, overruled the motion to set aside the verdict, and grant a new trial, and award judgment on said verdict, and the defendant excepts, and the plaintiffs move the court to render judgment on said verdict in favor of said plaintiff, John T. Huff, individually, he having become owner of the land and ferry to which said damages accrued since the commencement of this suit, as is shown by proof produced to the court; to which motion the defendant consents, and asks that said judgment be rendered in conformity to said special verdict, to which the plaintiffs object. And the court being fully advised, order the judgment be now rendered in favor of said plaintiff, John T. Huff, and in accordance with said special verdict. To the ordering of said judgment in accordance with said special verdict, the plaintiffs except.

It is therefore considered by the court now here, that said plaintiff, John T. Huff, do have and recover of and from said defendant, the sum of three hundred and seventy-five dollars and fifty cents, damages to the lands herein, occasioned by the location and construction of the said railroad across the same; and the further sum of two thousand seven hundred and eight dollars damages occasioned to said ferry by said railroad and bridge, making in all, the sum of three thousand and eighty-three dollars and fifty cents, found by the jury aforesaid in this behalf, and also the costs and charges in this behalf. And the defendant prays an appeal to the supreme court, which is granted upon her filing bond in the penalty of five thousand dollars, conditioned according to law, with surity to the approval of the court within thirty days.

452 And afterwards, to wit, on the thirteenth day of March, A. D. 1866, an execution was issued to the sheriff of Tippecanoe County, which reads as follows, to wit:

STATE OF INDIANA, *Tippecanoe County, set:*

The State of Indiana to the sheriff of Tippecanoe, in said State, greeting:

Whereas, John T. Huff, impleaded with Geneviere Huff, Samuel D. Huff, Ionia Huff, and Esidonia Huff, by Timothy Dame, their next friend, recovered judgment against New Albany and Salem Railroad Company, on the 6th day of November, A. D. 1857, in the Tippecanoe circuit court for three thousand and eighty-three dollars and fifty cents, upon which there is due $3,083.50, principal and interest, and two hundred and two dollars and forty-four cents costs accrued to this time, together with 1.00 cents for issuing, filing, and entering this writ, collectable without any relief from valuation or appraisement laws: You are therefore hereby commanded to levy the said sums of money of the property of the defendant and replevin bail in your county subject to execution, and have the money at the clerk's office to satisfy said judg-

ment, interests, and costs, and return the writ in one hundred and eighty days, with your doings thereon.

Witness, W'm R. Ellis, clerk of our said court and the seal thereof affixed at office in Lafayette, on this 13th day of March, A. D. 1866.

[SEAL.] W. R. ELLIS, *Clerk.*
S. E. HOTCHKISS, *D. C.*

And afterwards, to wit, on the 20th day of September, A. D. 1866, said execution was filed in the clerk's office with the sheriff's return endorsed thereon, in the words and figures following, to wit:

Received this writ, March 13th, 1866, at 11 o'clock a. m.
JAMES COLEGROVE, *Sheriff.*

As within commanded, I have this 20th day of March, 1866, levied this writ on the following-described real estate, to wit: Lots No. one hundred and fifty-six (156) and one hundred and fifty-seven (157) in Cabbott and Huntington's addition to the city of Lafayette, Tippecanoe County, Indiana, and advertised the same to sell on the 14th of April, 1866, and by order of plaintiff's attorney, this sale is stopped. I have received of defendant thirteen and $\frac{15}{100}$ dollars, and have applied the same on my fees. I therefore return this writ not satisfied.

Sept. 17th, 1866.

JAMES COLEGROVE, *Sheriff.*
By S. R. HEDGES, *Dep.*

453 And afterwards, to wit, on the fifth day of August, A. D. 1866, the following vendi. was issued to the sheriff of Tippecanoe County, in this behalf, to wit:

Vendi.

THE STATE OF INDIANA, *Tippecanoe County:*

The State of Indiana, to the sheriff of Tippecanoe County, greeting:

Whereas, we lately commanded you, that of the property in your county of the New Albany and Salem Railroad Company, you should cause to be levied and made the sum of three thousand and eighty-three dollars and fifty cents, which John T. Huff impleaded with Genevieve Huff, Samuel D. Huff, Ionia Huff, Esadonia Huff, by Timothy Dame, their next friend, lately in our Tippecanoe circuit court, to wit, on the 6th day of November, 1857, recovered against the said New Albany and Salem Railroad Company, as also the sum of two hundred and two dollars and forty-four cents, with the further sum of one dollar for said writ, filing and returning the same, whereof the said New Albany and Salem Railroad Company stood convicted, as appears to us of record, and that you have said money before the judge of our said Tippecanoe circuit court at the clerk's office thereof at the expiration of one hundred and eighty days from the 13th day of March, 1866, to render unto the said John T. Huff impleaded, &c., for their judgment and costs aforesaid; and whereas, on the 20th day of September, 1866, you made return to our said court that by virtue of said writ, to you directed, you had taken and levied said writ on the following real estate, to wit: "Lots Nos. one hundred and fifty-six (156) and one hundred and fifty-seven (157,) in Cabbot and Huntington's addition to the city of Lafayette, Tippecanoe County, Indiana," which said property remained unsued for; "by order

of plaintiff's attorney, this sale is stopped;" and therefore you could not have said money at the day and place therein mentioned: We therefore hereby command you that you expose to sale, and sell, or cause to be sold, the aforesaid property of the said New Albany and Salem Railroad Company, so by you levied on as aforesaid, and if the same shall not sell for a sum sufficient to satisfy the judgment, interest, and costs aforesaid, together with one dollar for issuing, recording, filing, and entering the return of this writ, we command you that of the property of the New Albany and Salem Railroad Company that may be found in your county you cause to be levied and made the bal-
454 ance of the judgment, interest, and costs aforesaid, and have the money at the clerk's office to satisfy said judgment, interest, costs, and return this writ in one hundred and eighty days, with your doings thereon.

Witness, Daniel Royse, clerk of said court, and the seal thereof affixed, at office in Lafayette, this fifth day of August, 1866.

[SEAL.] DANIEL ROYSE, *Clerk.*
C. H. WALLACE, *Dep't.*

THE STATE OF INDIANA,
Tippecanoe County, ss:

I, Daniel Royse, clerk of the Tippecanoe civil circuit court, in the State of Indiana, do hereby certify that the above and foregoing is a full, true, and complete copy of the judgment rendered by the Tippecanoe circuit court in the above-entitled cause, also of the execution issued thereon on the 13th day of March, A. D. 1866, together with the sheriff's return endorsed thereon, and also of the vendi. issued thereon, on the 5th day of August, A. D. 1868, as the same appeared of record now on file in my office.

In testimony whereof I have hereto set my hand as such clerk, and affixed the seal of our said court, at office in Lafayette, this January 11th, A. D. 1869.

[SEAL.] DANIEL ROYSE, *Clerk.*
W. G. LITTLETON, *D. C.*

The vendi. copied in the foregoing transcript contains the following endorsement of the proceedings of the sheriff thereon, to wit:

As by this writ commanded, I have this 27th day of August, 1868, advertised the within-described real estate to sell on the 19th day of September, 1868, and after having given due and legal notice of the time and place of such sale, I did, on said 19th day of September, 1868, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of said day, at the door of the court-house in said county, proceed to offer at public auction the rents and profits for the term of seven years, and at no less than the full two-thirds of the appraised value thereof, of the following-described real estate, situated in Tippecanoe County, in the State of Indiana, to wit, lots No. one hundred and fifty-six (156) and one hundred and fifty-seven (157) in Cabbott & Huntington's addition to the City of Lafayette, and no one bidding therefor, I did then and there and in like manner proceed to offer at public outcry the fee-sim-
455 ple of said real estate, at not less than the full two-thirds of the appraised value thereof, and John T. Huff did then and there bid therefor the sum of three thousand three hundred and thirty-three dollars and thirty-five cents, and that being the highest and best bid offered, and being the full two-thirds of the appraised value thereof, as shown by the inventory and appraisement herewith returned, to wit,

(insert) said real-estate was by me then and there, and in due form of law, openly struck off and sold to the said John T. Huff, at his bid.

Sheriff's fees, $137.84.

Original costs, $153.60.

And day is given.

Order.

And afterwards, to wit, on the 3d judicial day of the term last aforesaid, it being the 13th day of January, 1869, the following proceedings were had in said cause, to wit:

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

Comes the plaintiff, and the court, being sufficiently advised in the premises, hold that the attorneys, William C. Wilson and Huff and Langdon have not produced sufficient authority to appear as attorneys for the defendant, the Louisville, New Albany and Chicago Railroad Company: Wherefore it is ordered by the court that the demurrer filed herein by them on behalf of the said company be stricken out, and the court, being sufficiently advised in the premises, sustain the motion made by Isaac N. Higman, executor of Robert Higman, deceased, and William C. Wilson, administrator of the estate of John Wilson, deceased, to be let in as defendants herein, and order that the said Higman's executor and Wilson's administrator be made parties defendant in this action, and that they be allowed to defend herein in their own behalf and in behalf of all other stockholders of said company who may desire to avail themselves of such defense; to which ruling of the court the plaintiff excepts, and the court now sustain the motion of John T. Huff to be reinstated as a party defendant in this action, to which ruling of the court the plaintiff excepts.

456 Thereupon come the said defendants, Isaac N. Higman, William C. Wilson, and John T. Huff, and file their separate demurrer to each of the paragraphs of the complaint, as follows, to wit:

Demurrer of Huff et al. to complaint.

STATE OF INDIANA, *White County, ss:*

White common pleas, January term, 1869.

JOHN T. HUFF, WILLIAM C. WILSON, ADMINISTRATOR of John Wilson, deceased, and Isaac N. Higman, executor of Robert Higman, (impleaded with others,)
ads.
DOUW D. WILLIAMSON.

The said defendants, John T. Huff, William C. Wilson, administrator, and Isaac N. Higman, executor, &c., demurs to each of the several paragraphs of the complaint herein, separately, and for cause of demurrer says the said several paragraphs of the complaint do not nor

does either of them state facts sufficient to constitute a cause of action.

W. C. WILSON AND HUFF & LANGDON,
Attorneys for Defendants who join in this demurrer.

And the said defendant, William C. Wilson, now moves the court for a rule against the plaintiff herein, and James F. Joy, the receiver heretofore appointed in this cause, to show why the appointment of the said James F. Joy, as receiver herein, should not be vacated; and the said Wilson files his affidavit in support of said motion as follows, to wit:

Affidavit of Wilson in support on motion.

STATE OF INDIANA, *White County, ss:*

White common pleas, January term, 1869.

457 DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

William C. Wilson, one of the attorneys representing the stockholders of said defendant, The Louisville, New Albany and Chicago Railroad Company, and a stockholder in said company, being sworn in open court, on his oath says, that he is the holder of twenty-four shares of the capital stock of the said company, and that he represents, as attorney in said cause, divers others of the holders of such stock, and amongst them Isaac N. Higman, executor of Robert Higman, deceased, who, with affiant, has been admitted defendants in this action. Said affiant says that the appointment of James F. Joy as receiver in said cause was made at the instance of the plaintiff, upon notice served on one Edward H. Waldren, the assistant superintendent of the road of said company, at Lafayette, in said State, and on no other person. That notice of such motion for a receiver was not served on any one of the other persons named as a defendant in said action; that said Waldren, at the time said notice was served on him, was employed as such superintendent, at the instance of the plaintiff, who, as a trustee of the holders of the bonds sued on, had possession of the mortgaged premises, and whose possession continued to the time of appointment of said receiver. And affiant says that the said James F. Joy is not competent or a fit person to be such receiver, for the following reasons:

1. He is a non-resident of the State of Indiana, and a resident of the State of Michigan, without the jurisdiction of the courts of this State.

2. He is the acting president of, and a stockholder in, the Michigan Central Railroad Company, a corporation organized, and owning and operating a railroad under the laws of the said State of Michigan; that said corporation so organized under said laws of Michigan is operating a railroad from Detroit, in Michigan, in the direction of Chicago, in the State of Illinois, and to form and complete her line of communication between said Detroit and Chicago, is using, managing, and control'ing about thirty-four miles of road owned by the Louisville, New
458 Albany and Chicago Railroad Company, being that part of the road of the last-named company extending from Michigan City, in the State of Indiana, to the east line of the State of Illinois; but

upon what claim or right the said thirty-four miles of said road are held by the said Michigan Central Railroad Company, affiant is not sufficiently advised to state; that in order to effect a fair adjustment of the matters involved in this suit, affiant believes it will become necessary to implead the said James F. Joy and the said Michigan Central Railroad Company as parties to this action; and that in the adjustment and settlement of questions pertaining to the said thirty-four miles of railroad, and the conflicting claims that must necessarily arise between the said Louisville, New Albany and Chicago Railroad Company and said Michigan Central Railroad Company, the said latter company and the said James F. Joy are directly and peculiarly interested.

Wherefore said affiant, for himself, and all others standing in like relation in this action, who may elect to avail themselves of the defense to this action, prays the court that the appointment of the said James F. Joy, as receiver in said cause, be vacated, and that the parties in interest, averse to the plaintiff herein, be allowed to question the right to the appointment of a receiver in said cause; and that if such appointment of a receiver should be held by the court to be necessary, that a competent person, residing within the jurisdiction of this court and within each of its process, be appointed; and to that end affiant prays for a rule against the plaintiff and the said James F. Joy, to show cause why the appointment of said James F. Joy, as receiver herein, shall not be vacated.

W. C. WILSON.

Subscribed and sworn to before me this 13th day of January, 1869.

DAN'L D. DALE, *Clerk.*
By JOHN S. HURTT, *Deputy.*

Wherefore it is ordered by the court, that the plaintiff herein and the said James F. Joy be, and they are hereby, required to show cause why the appointment of the said James F. Joy as receiver in this cause shall not be vacated; and that this rule be made answerable on the fifth judicial day of the present term of this court at 10 o'clock a. m.; to which ruling of the court the plaintiff excepts, and day is given.

Order.

And afterwards, to wit, on the 4th judicial day of the term last
459 aforesaid, it being the 14th day of January, 1869, the following proceedings were had in said cause, to wit:

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al.

Comes the plaintiff, by Crawford and Chase & Wilstach, his attorneys, and moves the court to strike the joint demurrer of the defendants, Huff, Higman, and Wilson, from the files of the court, and files his written motion therefor, in these words:

Motion to strike out.

White common pleas court.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

The plaintiff moves the court to reject and take from the files the joint demurrer filed by John T. Huff, William C. Wilson, administrator, and Isaac N. Higman, executor, and for cause assigns:

1. That the said parties have not yet by any pleading, petition, or defense made themselves parties to this proceeding.

2. That they have no right to file any demurrer to any pleading in which no relief whatever is prayed against them or any of them.

CRAWFORD, AND CHASE & WILSTACH,
Attorneys for Plaintiff.

And day is given.

Order.

And afterwards, to wit, on the 5th judicial day of the term last aforesaid, it being the 13th day of January, 1869, the following proceedings were had in said cause, to wit:

460 DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

Comes the plaintiff, by counsel, and files his answer and counter-affidavits to motion to vacate appointment of receiver herein, which motion and affidavits are in these words:

Motion in discharge of rule.

White common pleas court.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

The plaintiff and James F. Joy, saving all exceptions to the legal sufficiency of the affidavits filed in support of the motion to show cause why the order appointing a receiver in this action should not be vacated, now file herewith the affidavit of said Joy, Hiram W. Chase and Henry Crawford, and ask that, for the reasons therein set out, the rule shall be discharged and the said motion denied.

HENRY CRAWFORD AND CHASE & WILSTACH,
Attorneys for Plaintiff.

Affidavit of Joy in support of above motion.

STATE OF INDIANA,
White County, ss:

James F. Joy, upon his oath, says that, in pursuance of the order of the court, made September 22, 1868, in this action, he proceeded to take possession of the line of railroad set out in the said order, and the equipments thereof, and has had and held, and still holds and operates the same, as by this court thereto directed.

This affiant further says, that he was so appointed receiver at the request and upon the motion and nomination of more than two-
461 thirds in amount and interest of the holders of the 10 per cent. and 8 per cent. bonds issued by the said railroad company, such interest and amount being more than two million dollars, exclusive of interest, which will amount to nearly or quite one million five hundred thousand dollars more. That each and all of said bondholders desire him to be continued as such receiver, pending the foreclosure of said mortgages set out in the complaint herein. This affiant says that all and singular the allegations of the complaint herein in regard to the issue of said several classes of bonds, execution of mortgages, and non-payment of principal and interest, are true, as he verily believes; that the said railroad company is hopelessly insolvent, and that at least eight years' interest is due and owing upon all her said issues of bonds, which she is utterly unable to pay, and interest upon interest is now and has for years been accumulating; that the principal of the bonded debt of said company is $4,781,000, or thereabouts, and the accumulated interest will amount to nearly as much more; that said road is not a first-class road, either as to track or equipment; that the iron is much worn, the ties need to be renewed in great part, and the equipment enlarged, repaired, and purchased; and that the earnings of the road have not for years past been, and do not now promise to be, sufficient to make such repairs and renewals, but are, even under the most economical administration, but little more than enough to meet the ordinary expenses of operating the said road without yielding more than small sums for betterments. This affiant has been connected with the active operation of railway lines for the past twenty years, and is competent to judge of the value and prospects of such property; and he states that he does not believe that the entire line of said Louisville, New Albany and Chicago Railroad Company, and all its property and equipments, is worth more than $1,500,000, and that upon sale it will not bring enough to pay one-third of the amount of principal and interest of the 10 per cent. and 8 per cent. bonds set out in the complaint.

The affiant further says, that the plaintiff in this action, having for some time before the commencement of this proceeding had possession of said road as the agent and attorney in fact of the said railroad company, and been engaged in operating the same, has during all the time he so operated said road, caused a fair and just account of all moneys received from any source whatever, and all moneys disbursed, to be entered at large upon the books of said corporation, and has pre-
462 served due and proper vouchers for all payments by him made, which has been continually in the possession and custody of the secretary of said corporation at the principal office at New Albany, which books and vouchers have always been open to the inspection of any stockholder, and when this affiant took possession, under said order of September 22, 1868, said books and vouchers were delivered into his custody, and so remain, and said Williamson has not, as this affiant be-

lieves, any funds or property whatever now in his hands belonging to said company.

This affiant further says that on the complaint in this action prayed for the appointment of a receiver, and legal process was duly served upon the railroad company and several other defendants in due time for the September term, 1868, of this court, and as this affiant is advised, no further or other notice was necessary, but notice was also served on the said railroad company on September 9, 1868, by service on E. H. Waldren, who was then and there the assistant superintendent and general agent of said company at Lafayette, of the said corporation, and a person whom the statute makes a proper agent to be served.

And this affiant further says that it is true that he is not a resident of the State of Indiana, but he is in the State, and within the reach of process of this court nearly every week in the year, and is at all times ready to submit himself to the process and orders of the court; and he is advised that no law or statute compels any court to appoint as receiver only a resident of Indiana, and especially when the creditors having the first lien and only real monetary interest in the property make a nomination.

Affiant further says that he is not interested in this action, except as by his appointment as receiver.

This affiant is president of the Michigan Central Railroad Company, and a stockholder therein, but, as this affiant is advised, the Michigan Central Railroad Company is not a party, and cannot be made a party to these proceedings, and is not in any way whatsoever interested therein.

JAMES F. JOY.

Subscribed and sworn to this January 15, 1869.

DAN'L D. DALE, *Clerk.*

463 *Affidavits of Chase & Crawford.*

White common pleas.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

STATE OF INDIANA, *White County, ss:*

Hiram W. Chase and Henry Crawford, upon their several oaths, each for himself, doth say that he has carefully read over the annexed affidavit of James F. Joy, and that the statements therein made all true; said affiants further state that they are well acquainted with the said Joy, and know that he is a railway manager of large experience and great ability, and no person could be found in Indiana more fit and competent to take charge of the property set out in the complaint; said affiants further say that neither the defendant Willson or Higman or any other of the defendants at any time within the past ten years, as affiants are informed and believe, have made any demand or application to the plaintiff or any officer of the corporation for any accounting or for any inspection of the books and vouchers now in the hands of the said Joy, as set out in his affidavit, but up to the beginning of

this action continually kept at the principal office of the said corporation, at New Albany, and open to the inspection of any stockholder.

HENRY CRAWFORD.
HIRAM W. CHASE.

Subscribed and sworn to this January 15th, 1869.

DAN'L D. DALE, *Clerk.*

And comes the plaintiff, by Crawford and Chase and Wilstach, his attorneys, and came also Samuel A. Huff and Byron W. Langdon, and present their claim for professional services as follows, to wit:

464 *Account of Huff & Langdon.*

The Louisville, New Albany and Chicago Railroad Company, in account with Huff & Langdon.

DR.

To fee in self ads. Kent et al., White common pleas, January term, 1857 ..... $500 00

CR.

January 10, 1857, by cash of Martin.....$50 00
August 1, " " " 40 00
——— $90 00

$410 00

And the court being satisfied of the justice of said claim, and that it ought to be paid out of the trust-funds in the hands of the receiver in this cause, order James F. Joy, the said receiver, to pay out of said funds to said Huff & Langdon the sum of four hundred and ten dollars.

And the court further ordered that said receiver pay over to the clerk of this court the sum of two hundred and two dollars and twelve cents, the amount of three several judgments and costs in this court, against the said railroad company for stock killed in operating said railroad, while the same was in the hands of the plaintiff under the trust-deed described in the complaint, to wit:

One in favor of Matthew Grassmer, judgment, interest, and costs, $72.62; one in favor of John P. Carr, judgment, interest, and costs, $66.53; and one in favor of Andrew Rohner, judgment, interest, and costs, 62.97. And day is given.

Order.

And afterwards, to wit, on the 9th judicial day of the term last aforesaid, it being the 20th day of January, 1869, the following proceedings were had in said cause, to wit:

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al.

Comes now the parties, and the court being sufficiently advised

465 in the premises, sustain the motion of the plaintiff to strike out the demurrer filed by Higman, Wilson, and Huff, to which said persons at the time except.

And the court also overrule the motion made by said Wilson to vacate the appointment of the receiver herein; to which ruling the said Wilson at the time excepted. And the said John T. Huff offers to file his separate demurrer to the complaint, to which the plaintiff objects, and said objection is sustained; to which the said Huff excepts.

And the said Huff, Higman, and Wilson move the court to grant an inspection of the five several mortgages sued on, and one of each of the issues of bonds secured thereby, to which the plaintiff objects and the court sustain such objection; and the said Wilson, Huff, and Higman except.

And thereupon the written report of the receiver is filed, together with the accompanying exhibits A and B, as follows:

Receiver's report.

White common pleas court.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

James F. Joy, heretofore appointed receiver in this action, reports to the court, that on the 1st day of October, 1868, in pursuance of the order of this court, he assumed possession and control of the property of the railroad company set out in the complaint, that is to say, all and singular the line of railroad from New Albany to Michigan City, and the rolling stock, equipments, and appurtenances, and divers amounts of personal property of various kinds used and employed by said company in and about the operation of her said line of railway in the production of tolls and income. The amount of personal property so received by the receiver is fully set out in Exhibit "A," which is herewith filed and made part of this report.

The amount of receipts and disbursements are also herewith filed and made part of this report, marked Exhibit "B." Said report only includes receipts and disbursements up to the 1st day of the current month, because settlements with connecting railroads are only
466 made monthly, and it is therefore more convenient to frame reports beginning and ending at the close of the month.

JAMES F. JOY.

Subscribed and sworn to, this 15th day of January, 1869.
DAN'L D. DALE, *Clerk.*

EXHIBIT A.

Invoice of property, material, &c., &c., of the Louisville, New Albany and Chicago Railroad.

SEPTEMBER 30TH, 1868.

All and singular the books of account, vouchers, and papers of the said Louisville, New Albany and Chicago Railroad Company, at the prin-

cipal office at New Albany, of every kind and description whatsoever used in stating the business of said corporation from its organization up to October 1st, 1868.

Number and class of cars.

17	passenger cars.	58	coal cars.
2	combination "	85	hand "
5	baggage "	80	rubble "
15	caboose "	4	wood "
184	box "	1	paymaster's "
86	flat "	2	boarding "
62	stock "		

NUMBER OF LOCOMOTIVES.—35 locomotives.

NEW ALBANY—GENERAL OFFICE.—1 desk, 1 safe, 1 wardrobe, one clock, 6 office-chairs, 1 washstand, 1 stand of drawers, 1 arm-chair, two spittoons, scrap-basket, newspaper-file, 1 desk, 2 tables, 1 stove, 4 chairs, 1 letter-press and stand, 1 clock, 1 wardrobe, 1 water-cooler and bucket, 1 closet, 4 ink-stands, scrap-basket and spittoons, 1 small safe, 1 large drawing-table, 1 stove, 1 book-rack and ticket-case, 1 safe and book-case, 1 table, 1 box, large desk and two small desks, 1 letter-press and stand, 1 clock, 1 dating-stamp, stove and coal bucket, 3 chairs, 2
467 clocks, 1 triangle desk, 1 large desk, 1 table, 1 letter-press and stand, 4 extra ticket-cases, 3 extra cases, 2 stamps, 5 chairs, 1 safe, 2 desk-stools, 1 eyeletting machine, 1 water-stand, stove and drum, 1 local ticket stock case, 3 coupon ticket-cases, 1 large M. desk, 1 oak desk, 1 plain desk, 1 walnut desk, large letter-press, 1 small letter-press, 1 table, 2 stoves and pipe, 3 chairs, 1 large case of drawers, 1 case for books and papers, 3 large cases for books, 1 case for papers, 1 dusting-brush, ink-stands, paper-weights, &c., &c.

NEW ALBANY STATION AND BAGGAGE-ROOM.—1 clothes-wringer, 1 box, 1 table with drawers, 2 desks, 2 tables and ice-box, 2 stools and 4 chairs, 6 stoves, 1 letter-press, 2 ink-stands, 1 old stamp, 2 coal-buckets, 1 shovel, tongs, and poker, 1 duster, 2 check-stands, 4 paper-files, 1 letter-clip, 1 ticket-case, 1 tool-box, 11 freight trucks, 1 crowbar, 1 pick, 1 small P. scales, 2 shovels, 2 stone hammers, 110 lb. nails, 4 brooms, 1 marking pot and brush, 2 prs. skids, 12 extra car-locks, 8 iron platform, ½ box pens, 4 s. mem. books, 1 ball lampwick, 1 sprinkler, 1 duster, 1 case, 100 bu. coal, 4 baggage-trucks, 1 bench and chest, 2 ladders, 1 lantern, 2 hatchets, 1,000 baggage-checks, 1 map, 1 pen-rack, scales.

PROVIDENCE.—Scales and depot material, office-furniture, and stationery.

PEKIN.—Scales and depot material, office-furniture, and stationery.

HARRISTOWN.—Scales and depot material, office-furniture, and stationery.

SALEM.—Scales and depot material, office-furniture, and stationery.

CAMPBELLSBURG.—Scales and depot material, office-furniture, and stationery.

SALTILLO.—Scales and depot material, office-furniture, and stationery.

LANCASTER.—Scales and depot material, office-furniture, and stationery

468 ORLEANS.—Scales and depot material, office-furniture, and stationery.

MITCHELL.—Scales and depot material, office-furniture, and stationery.

BEDFORD.—Scales and depot material, office-furniture, and stationery.

HARRODSBURG.—Scales and depot material, office-furniture, and stationery.

SMITHVILLE.—Scales and depot material, office-furniture, and stationery.

BLOOMINGTON.—Scales and depot material, office-furniture, and stationery.

ELLETSVILLE.—Scales and depot material, office-furniture, and stationery.

STINESVILLE.—Scales and depot material, office-furniture, and stationery.

GOSPORT.—Scales and depot material, office-furniture, and stationery.

QUINCY.—Scales and depot material, office-furniture, and stationery.

CLOVERDALE.—Scales and depot material, office-furniture, and stationery.

PUTNAMVILLE.—Scales and depot material, office-furniture, and stationery.

GREENCASTLE JUNCTION.—Scales and depot material, office-furniture, and stationery.

GREENCASTLE.—Scales and depot material, office-furniture, and stationery.

BAINBRIDGE.—Scales and depot material, office-furniture, and stationery.

469 CARPENTERSVILLE.—Scales and depot material, office-furniture, and stationery.

ASHBY'S STATION.—Scales and depot material, office-furniture, and stationery.

LADOGA.—Scales and depot material, office-furniture, and stationery.

CRAWFORDSVILLE.—Scales and depot material, office furniture, and stationery.

LINDEN.—Scales and depot material, office-furniture, and stationery.

CORWIN.—Scales and depot material, office-furniture, and stationery.

LAFAYETTE.—Scales and depot material, office-furniture, and stationery.

BATTLE GROUND.—Scales and depot material, office-furniture, and stationery.

BROOKSTON.—Scales and depot material, office-furniture, and stationery.

CHALMERS.—Scales and depot material, office-furniture, and stationery.

REYNOLDS.—Scales and depot material, office-furniture, and stationery.

FRANCISVILLE.—Scales and depot material, office-furniture, and stationery.

MEDARYVILLE.—Scales and depot material, office-furniture, and stationery.

SAN PIERRE.—Scales and depot material, office-furniture, and stationery.

WANATAH.—Scales and depot material, office-furniture, and stationery.

470 WESTVILLE.—Scales and depot material, office-furniture, and stationery.

LACROIX.—Scales and depot material, office-furniture, and stationery.
MICHIGAN CITY.—Scales and depot material, office-furniture, and stationery.

Supplies on hand in the store-keeper's department.

7 straightening sledges, 5 tamping bars, 1,882 lbs. switch-chain, 4 pry-bars, 10 jack-levers, 4 claw-bars, 19 pinch-bars, 33 ingots copper, 724 lbs. coupling links and pins, 16 lbs. lampblack, 1 counter-scale, 1 coach-lamp, 565 lbs. telegraph ozines, 1 box 10x14 window-glass, 10 lights window-glass, 2 boxes 10x18 window-glass, 1 box 13x16½ window-glass, 1 box 12½x19 window-glass, 19 lights, 10x12, 1 side lace-leather, 1 canvass hose for water-station, 23 track-guages, 6 switch-ropes, 12 kegs nails, 20 lbs. nails, 7 kegs wr't spike, 1 doz. Ames' No. 2 shovels, 8 axes, 1 manifest-press, 1 letter-press, 7 foot-adzes, 2,150 No. 9 envelopes, 1,500 No. 9 envelopes, 100 No. 80 envelopes, 300 No. 975 envelopes, 2,000 No. 520 envelopes, 3 reams letter-paper, 1½ reams note-paper, ¼ ream foolscap paper, 3 blank-draft books, 26 red signal-flags, 19 white signal-flags, 2 chamois skins, 2 freight-trucks, 8 letter impression-books, 9 foolscap impression-books, 10 manifest impression-books, 1 5-qr. blank-book, 1¼ doz. hammer-handles, 3 doz. hammer-handles, 1½ doz. hammer-handles, 3⅓ doz. adz-handles, 2 doz. maul-handles, ½ doz. pick-handles, 2¼ doz. axe-handles, 2 doz. picks with handles, 4 corn-brooms, 300 lbs. chalk, ½ doz. adze-handles, ½ doz. sledge-handles, 4 hair cushions, 10 spike-mauls, 10 stove-plates, 5 stove-doors, 20 lbs. coach candles, 34 freight-car locks, 8 dusting-brushes, 4 coach-window brushes, 7 hemp dusters, 6 lantern-globes, 1 wooden bucket, 6 kerosene lamp-chimneys, 28 kerosene lamp-chimneys, 1 red signal-lantern, 6 center coach-lamps, 18 side coach-lamps, 27 bottles writing-fluid, 44 bottle' C. & F. copy' ink, 25 bottles French copying-ink, 12 coach-ventilators, 3 doz. No. 1 lamp-wick, 17 doz. No. 2 lamp-wicks, 4 oil-fillers, 7 H. car oil-cans, 10 battery-jars, 2 battery-cups, 7 coach lamp-chimneys, 2 tin dippers, 8 tin cups, 11 battery-brushes, 4 locomotive signal-bells, 18 engineer-hammers, 11 engineer hammers, 21 T-rail punches, 7 ship-mauls, 6 doz. kerosene burners, 2 gross ¾ No. 9 screws, 6 doz. sash-lifts, 6 doz. blind-lifts, 1 p'r flush-handles, 2 p'r telegraph-plyers, 1 p'r lamp-scissors, 15 augur-bits, 2 15-in. monkey-wrenches, 6 12-in. monkey-wrenches, ½ doz. hasps and staples, 10 papers 4-oz. tacks, 4 doz. screw-eyes, 10 doz. ass't' cocks, 6 sash-fast'ners, 1½ doz. 14-in. mill-files, 1 doz. 14-in. square files, ½ doz. 10-in. mill-files, 1 doz. 16-in. sq. bast-files, 20 window-springs, 7 hooks and staples, 3 lbs. hemp twine, 13¼ lbs. col'd twine, 1½ doz. tripole, 6 bottles mucilage, 1 hand-saw, 6 adze-eye hammers, 10 lamp-burners, 10 No. 2 hand-axes, 10 No. 3 hand-axes, 22 hand cold-chisels, 2 center C. O. lamps, 3 ten-gal. oil-cans, 5 one-gal. oil-cans, 2 sprinkling-pots, 4 marking-pots, 3 C. O. stand-lamps, 6 bench oil-cans, 10 locomotive cans, 26 engine-buckets, 1 doz. car rim-locks, 1 home dow, 2 night-latches, 1 doz. stove-polish, 9 padlocks, 1 p'r 3x3 butts, 1 doz. ½-in. finishing-nails, 1 thumb-latch, 7 drawer-locks, 6 braces, 134 boxes matches, 3 drawer-locks, 10 gal. coal-oil, 8 time-books, 9 lbs. candle-wick, ¾ doz. office seal'-wax, 7 memoranda-books, 4 marking-brushes, 6 memoranda-books, 1 varnish-brush, 1 memoranda-book, 1 lb. gum Arabic, 48 doz. lead pencils, 4 doz. lead-pencils, (empire,) ¾ doz. lead-pencils, (blue,) 34 gro. steel pens, 5 box' paper-fasteners, 10 gum-erasers, 1 bottle carmine, 10 coach-keys, 28 switch keys, 26 freight-car keys, 10 spirit-levels, 19 locks, 850 2-c. stamps, (revenue,) 2 bbls. W. Ja. lubric' oil, 62 5-c. stamps, (revenue,) 2 bbls. coal-oil, 425 3-c. stamps, (P. O.,) 23¾ doz. H. L. chimneys, 68 2-c. stamps, (P. O.)

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Inventory of stock on hand in painters' department.

12 p's head-lining, complete, 1 new water-cooler and stand, 6 p's head-lining, unfinished, 15 new baskets, 14 lbs. chrome green, 30 lbs. American vermillion, 10 lbs. litherage, 6 lbs. sugar of lead, 6 lbs. glue, 4 bbls. mineral, (900 lbs,) 175 lbs. red lead, 2½ bbls. ochre, (500 lbs.,) 25 lbs. rou' pink, 4 lbs. chrome yellow, 100 lbs. dry white lead, 12 lbs. lamp-black, 25 lbs. whiting, 25 lbs. plaster Paris, 10 lbs. pummice-stone, 25 lbs. white lead, 30 gals. linseed oil, 25 gals nap'tha, 1 gal. turpentine, 3 gals. Japan varnish, 8 gals. outside varnish, 30 gals. asphaltine, 1 gal. Demar.

Stock on hand, car department.

NEW MATERIAL.—1,980 feet of pine lumber, 5,519 ft. of oak,
472 100 ft. of ash, 1,468 ft. of walnut, 600 ft. of cherry, 26,621 lbs. post-iron, 1,917 lbs. wr't iron, 1,900 bolts, 600 lbs. brasses, 490 lbs. rubber, 300 lbs. steel, 104 second-hand wheels, 34 new wheels, 20 axles, (6,000 lbs.,) 17 axles, (4,896 lbs.,) 103 second-hand axels, (22,822 lbs.,) 7 boxes of glass, 7 gross of screws, ½ doz. knobs, ½ doz. latches, 15 lbs. finishing-nails, 6 kegs of nails, 6 brake-beams, 450 freight-car brake-blocks, 159 passenger-car brake-blocks, 28 baggage-car brake-blocks, 6 stock-car doors, (small,) 2 end-baggage car-doors, 5 mail-car-doors, 20 side-baggage car-doors, 4 box-car doors, 102 end-doors for box-cars, 1 bolten-door, 16 jacks.

MACHINERY AND TOOLS.—66 machine-bits, 7 rip-saws, 4 putting-off saws, 1 power mortising-machine and chisels, 1 foot-mortising machine, 1 large tenoning-machine, 1 moulding-machine, 1 drill-press machine, 1 double jig-saw, 1 Daniel's planer, with staver attached, 1 splice boring-machine, 1 edge-shaping machine, 1 splice sticking-machine, 1 grooving-machine, 4 saw-beds, 1 power gummer, 1 hand gummer, 2 iron vices, 1 power grindstone, 1 turning-lathe, 7 work-benches, 1 plock, 25 sets moulding-bits, 1 adze, 8 scroll-saws, 5 oil-cans, 1 set of turning-chisels, 1 set of hollow and round chisels, 1 set of bead-planes, 1 set of rabbit-planes, 25 wrenches.

OLD MATERIAL.—60 lbs. of old brass, 1,000 lbs. of old steel, 54,380 lbs. of wr't-iron axles, 9,100 lbs. of post-iron.

STOCK IN MICHIGAN CITY.—10 brakes, 18 lbs. gum, 42 lbs. steel, 156 lbs. chain, 3,787 lbs. cast-iron, 3,432 lbs. wr't-iron, 293 lbs. brass, 10 car-wheels, 7 volute-springs, 2 old truck-frames, ass't' tools, 5 jack-screws, 4 oil-cans, 3 hand-lamps, 2 monkey-wrenches, 2 open wrenches, 1 pinch-bar, 4 brooms, 1,784 lbs. old wr't scraps, 360 lbs. old post-scrap, and 50 lbs. old brass.

STOCK IN LAFAYETTE.—5,423 lbs. of cast-iron, 3,580 lbs. wr't iron, 400 lbs. of brass, 70 lbs. of steel, 24 lbs. of rubber, 450 ft. poplar lumber, 900 ft. oak lumber, 2 kegs of nails, 2 boxes of glass.

473 Inventory of stock, tools, machinery, &c., on hand in the locomotive department.

84,300 lbs. ass't' castings, 3,959 lbs. ass't' spring-steel, 1,603 lbs. ass't new brass, 163 lbs. ass't' old brass, 18,149 lbs. scrap spring-steel, 810 lbs. cast-steel, (new,) 12,640 ass't' sizes wr't iron, 1 boring-bar, 1 switch-stand, 1 crane-shaft, 1 boiler-punch, 1 old whal' press, 2 T-rail wedges, 1 T-rail forge, 1 pulley, 5 grindstones, 5,380 lbs. prepared T-rail, 3 driving-wheels, 1 5-lb. engine steam-pipe, 750 lbs. ass't' cast and wr't-iron tools,

7,840 lbs. nuts, 16 new engine truck-axles, (4,303 lbs.,) 4,320 lbs. new tank-axles, 45 second-hand tank-wheels, 13 new tank and truck-wheels, 5 p'r engine driving-wheels, 9 p'rs new pilot truck-wheels, 4 p'rs second-hand truck and pilot wheels, 4 p'rs tank-axles and wheels, 1 sheet-iron water-tank, 915 lbs. wr't-iron mandril and traps, 980 lbs. steel tools, 624 wr't and cast-iron tools, 450 lbs. tapps and dies, 130 lbs. hand-reamers, 2,021 lbs. wrenches, 300 lbs. cold chisels and other tools, 2 hydraulic jacks, 24 vices, 9 screw-jacks, 1 chain-pulley, 1 rope-pulley, 2 trucks, 1 lumber-truck, 3 wheelbarrows, 2 axes, 2 shovels, 1 spike-maul, 1 large scale, 1 small scale, 2 coal-stoves, 1 lot of shafting, 1,500 lbs. wr't scrap, 1 16-ft. planer, 1 10-f't. planer, 1 6-ft. planer, 1 5-ft. planer, 1 3½-ft. planer, 1 compound planer, 1 driving-wheel lathe, 86 swing-planers, 1 turning-wheel lathe, 26 in., 1 turning wheel-lathe, 43 in., 1 turning wheel-lathe, 24 in., 3 turning wheel lathe', 19 in., 2 turning-wheel lathe, 16 in., 882 lbs. forging, 400 lbs. steel tools, 105 lbs. antimony, 5,350 lbs. steel and iron tools, 870 lbs. zinc, 599 lbs. sheet copper, 186 lbs. block-tin, 350 lbs. pig-lead, 135 lbs. ingot-copper, 5 kegs ass't' nails, (500 lbs.,) 274½ lbs. packing-yarn, ½ box glass, 14 head-light glass, 25 lbs. bell cord, 13 hammer-handles, 16 sledge-handles, 150 lbs. bolt-copper, 85 oil-stones, 1 lot sand-paper, 24 quires emery-cloth, 37 head-light chimneys, 7 track-chisels, 3 spike-mauls, 15 lbs. emery, 75 lbs. tripole, 9 balls candle-wick, 4 monkey-wrenches, 6 hand-hammers, 190 lbs. engine-tools, 12 old monkey-wrenches, 6 engine oil-cans, (1 q't,) 4 white lanterns, 9 engine oil-cans, (1 p't;) 4 red lanterns, 5 locomotive cab-lamps, 3 1-gal. oil-cans, 6 sheet-iron buckets, 6 tin cups, 27 shop oil-cans, 1 ball marlin, 1 p'e leather water-tank hoes, 2 sides lace-leather, 12 lbs. shellac, 12 lbs. rosin, 1 old steam-guage, 12 lbs. borax, 8 papers lampblack, 9 shop-lamps, 2 rolls rubber-cloth, 21 10-in. strap-hinges, 7 emery-cups, 23 3-in. butt hinges, 30 papers finishing-nails, 30 papers as'rt' rivets, 1 lot
474 punched washers, 9 sheets of tin, 1 p'r scales, 20 lbs. copper-wire, 76 lbs. iron-wire, 2 packing-hooks, 25 lbs. bolts, 27 lbs. rabbit rings and brass-wire, 48 ⅝-in. square files, 11 14-in. half-round bast-files, 34 ¾-in. square files, 13 13-in. half-round bast-files, 3 ¾-in. round files, 6 10-in. half-round bast-files, 6 10-in. pannelled files, 10 13-in. hand smooth files, 12 12-in. pannelled files, 7 14-in. hand smooth files, 4 16-in. hand bast-files, 4 15-in. hand smooth files, 6 14-in. hand bast-files, 4 16-in. hand smooth files, 16 13-in. hand bast-files, 6 14-in. flat bast-files, 9 12-in. hand bast-files, 4 10 flat bast-files, 4 10 in. parallel bast cut-files, 14 10-in. rasps, 21 10-in. half-round smooth files, 21 16-in. mill-saw files, 2 12-in. hand smooth files, 26 15-in. mill-saw files, 8 12-in. dead smooth files, 28 12-in. mill-saw files, 8 13-in. dead smooth files, 5 16-in. dead smooth files, 2 14-in dead smooth files, 20 14-in. hand smooth files, 10 15-in. hand smooth files, 6 16-in. hand smooth files, 1,873 lbs. old locomotive tyres, 1,973 lbs. copper flues, 14,030 lbs. old locomotive tyres, 175 ft. leather hose, (old,) 50 f't. rubber hose, 1 bbl. No. 1 lard-oil, (40 gal.;) 1 bbl. engine-oil, (40,) 1 bbl. No. 2 lard-oil, (41 gal.;) 2 bbl. coal-oil, (83 gal.;) 100 lbs. cotton waste, 1,600 f't. oak lumber, 200 f't. elm lumber, 1,000 f't poplar lumber, 4 carpenter's benches, 500 lbs. bolts and nuts, 4 carpenters' horses, 2,891 lbs cast-iron, 400 lbs. tools, 300 f't black walnut, 540 lbs. brass flues, 60 lbs. lead pipe, 1 bellows, 1 coal-stove, 8 box-stoves and pipes, 1 vice, 1 lot mould flasks, 1 vice, 1 small scale, 1 double furnace, 1 moulding-trough, 1 standing trough, 540 lbs. old copper, 200 lbs. white-metal, 525 tongs and tools.

COPPER-SHOP.—1 folding-machine, 2 p'rs large shears, 1 p'r rollers, 1 budding-machine, 1 p'r small shears, 1 bellows, 1 thick-edge machine, 1 anvil, 1 furnace, 1 cutting-off saw, 1 reaming-lathe, 1 hack-saw, 1 iron

square, 1 p'r compasses, 1 p'r callipers, 1 draw-bench and dies, 100 lbs. scrap-lead, 1,720 lbs. tools and dies, 22 lbs. iron wire, 150 lbs. sheet-iron templets, 50 lbs. sheet copper, 1,470 lbs. wr't scrap, 3 cast-steel frogs.

BOILER-SHOP.—4 ass't lever-punches, 1 boiler-shears, 1 boiler-iron roller, 7 cast-iron forms, 450 lbs. swedge-tools; 230 lbs. sheet-iron templets, 1 forge, 1 anvil, 1 vice, 1 iron water-trough, 1 p'r clamps, 550 lbs. tongs, 425 lbs. reamer-chisels, 170 lbs. flue-tools, 50 lbs. taps, 200 lbs. sheet-iron, 500 lbs. cast-iron rollers, 1,600 lbs. boiler-iron.

475 BLACKSMITH-SHOP.—88 lbs. old forging-bridges, 84 lbs. forging-blocks, 654 lbs. old chain, 52 lbs. new chain, 950 lbs. Pulling bar-springs, 113 lbs. forging, 3,744 lbs. old tyre-iron, 9,390 lbs. old car-braces, 18,278 lbs. old iron, 8,642 lbs. bridge-iron, 2 locomotive domes, 1 boiler-shell, 419 guy-rods derrick, 3,559 lbs. forging for engines, 490 lbs. tank-braces, 7,231 lbs. forging for cars, 944 lbs. el'iptic springs, 453 lbs. brake-springs, 1 bolt-machine, 1 cast-iron form for car-braces, 5 swedge-blocks, 5 leveling-blocks, 10 anvils, 1 cast-iron cone, 3 cast-iron water-troughs, 6 sheet-iron troughs, 1 ram, 1 tryer-iron, 5 small cast-iron troughs, 1 spring-roller, 1 furnace, 14 sledges, 2 troughs for case-hard'ning spring, 2 wr't-iron cranes, 3 racks for tongs, 1 set of tools for welding tyre, 2,106 lbs. tongs, 1,720 lbs. mandrils and formers, 1,671 lbs. top and bottom swedges, 8 old bellows, 7 old head-lights, 4 new head-lights, 140 lbs. Russia iron, 10 yards wire-netting, 228 lbs. brass, 170 lbs. parallel rod-brasses, 120 lbs. brass cylinder-bonnets, 840 lbs. parallel rod-brasses, 50 lbs. cast cylinder-bonnets, 400 lbs. eccentric straps, 192 lbs. tumbling-shafts, 262 old brass packing-rings, 1,092 lbs. cast-iron pumps, 420 cast-iron air-chambers, 70 lbs. cast-iron nozzles, 110 lbs. old cast-iron air-chambers, 870 lbs. cast-iron tools, &c., 560 cast-iron valves, 1 force-pump, 1 cylinder-borer, 1 oscillating-engine, 2,615 lbs. boiler and tank rivets, 2,878 bu. Pittsburg coal, 75 bu. coke, 300 bu. charcoal.

MACHINE-SHOP OFFICE.—2 desks, 3 ink-stands, 1 closet, 1 letter-press, 1 clock, 1 wash-stand, 2 buckets, 2 kerosene-lamps, 1 coal-stove, 1 wood-stove, 2 drawing-stands, 3 chairs, 1 tape-line.

SHOP-YARDS.—5,040 lbs. old cast-iron frogs, 1,440 lbs. castings, 440 lbs. water-crane, 1,375 lbs. old bridge-chains, &c.

BLOOMINGTON SHOP.—1 stationary engine in good order, 2 p'r jack-screws, 1 head-lamp, 65 f't of hose, 1 ball packing-yarn, 2 eccentric straps, 2 p'rs 30-in. tank-wheels and axles, 2 p'r pilot truck-wheels and axles, (30-in.,) 2 p'rs 28-in. pilot truck-wheels and axles, 1 p'r 50

476 lbs. brass packing-rings, 1 p'r 40 lb. brass packing-rings, 2 brass cross-head gibbs, 1 block and fall, 6 14-in. flat bast-files, 6 gauge-cocks, 8 15-in. square files, 1 steam-gauge, 4 14- half-round bast-files, 4 wedge-bolts, 4 driving-spring rollers, 8 lbs. sole-leather, 10 lbs. babbit-metal, 6 hickory brooms, 45 lbs. hose-nuts, 7 cast-iron sleeves, 4 wood-buckets, 1 seive, 1 drying-pan, 1 iron bucket, 1 grindstone, 265 lbs. pilot-truck brasses, 50 lbs. white metal, 123 lbs. tank-brasses, 900 lbs. tank boxes, 130 cast-iron wedges, 1 sprinkling-pot, 700 lbs. tank-castings, 184 lbs. driving-spring sad'les, 500 lbs. other castings, 106 lbs. tank-spring stir'ups, 270 lbs. driving-springs, 110 lbs. pilot-truck springs, 110 lbs. tank-springs, 3 white lanterns, 1 red lantern, 3 vices, 1 face-plate, 3 die-plates, 16 tapps, 9 reamers, 2 ratchel-drill, 3 shovels, 1 axe, 1 p'r small scales, 4 oil-cans, 3 wrenches, 200 lbs. wrenches, 4 pinch-bars, 2 snow-plows, 1 hand-saw, 2 augurs, 1 brace, 3 bits, 50 lbs. flue-ferrules, 1 wheel-barrow, 1 rubble-car, 1 furnace for shrinking tyre, 4 heating-stoves, 3 large oil-tanks, 1 coal-stove, 700 lbs. iron-tyre, 1,208 lbs. ass't wr't iron, 200 lbs. old iron, 200 lbs. forging-iron, 50 lbs. spring-steel, 30 lbs. cast-steel, 25 lbs. blister-steel, 760 lbs. forging for cars, 318 lbs. forging for

engines, 145 lbs. equalizers, 2 bellows, 50 truck-spring spring-hangers, 100 lbs. draw-bars, 84 driving spring-hangers, 400 lbs. blacksmith tools, 2 heading-blocks, 3 anvils, 200 lbs. scrap, 100 lbs. wr't scraps, 1 chain, 1 office-stove, 1 head-light reflector, 1 desk, 1 chain, 100 bu. coal, 6 reams and blocks, brakes.

LAFAYETTE SHOP.—6,504 lbs. cast iron, 505 lbs. finished brass, 5 tons Danville coal, 342 lbs. rough brass, 1 ton Pittsburg coal, 145 lbs. old brass, 17 lbs. white metal, 512 lbs. spring-steel, 657 lbs. bar-iron, (ass't,) 151 lbs. nuts, 26 lbs. sheet-iron washers, 282 lbs. boiler-rivets, 35 lbs. waste, 37 lbs. packing-yarn, 17 lbs. smoke-stack netting, 14 f't gum-hose, 3 lbs. soapstone-packing, 81 gal's engine-oil, 200 lbs. tallow, 40 gal's lard-oil, 2 2-gal. oil-cans, 2 tallow-cans, 5 1-p't oil-cans, 14 brake-blocks, 2 brooms, 2 lbs. babbit-metal, 4½ lbs. soft solder, 7 copper rods, 1½ yards Canton flannel, 1¼ lbs. lamp-wick, 6 lbs. borax, 2 lbs. emery, 8 lbs. tripole, 4 12-in. round files, 4 14-in. mill-saw files, 9 8-in. half-round files, 2 lbs. spitters, 2 14-in. half-round files, 6 tons of coal, 14 14-in. square files, 504 lbs. cast scrap-iron, 8 14-in. flat bast files.

MICHIGAN CITY SHOP.—30 gal's lard-oil, No. 1; 16⅞ gal's coal-
477 oil, 43⅞ gal's engine-oil, 200 lbs. tallow, 35 lbs. packing-yarn, 13 lbs. waste, 520 lbs. rags, 8 balls wick, ⅜ yard Canton flannel, 285 lbs. brass, 8 lbs. sheet-copper, 15 lbs. white metal, 2 lbs. rubber-cloth, 17 f't gum-hose, 40 lbs. cast-steel, 21 head-light chimneys, 1 21-in. head-light glass, 16 lbs. red lead, 1 13x18 head-light glass, 20 lbs. white lead, 1 2-gal. oil-can, 2 red lanterns, 1 small oil-can, 3 white lanterns, 6 shop-lamps, 1 cab-lamp, 3 brooms, 1 wr't-iron center-pin, (80 lbs.;) 20 brooms, (hickory;) 1 tender-iron draw-bar, (70 lbs.;) 1 driving-spring, 1 engine iron push-bar, (63 lbs.;) 47 lbs. flue-skimbles, 25 lbs. nails, 1,400 lbs. cast iron, 7 lbs. flour emery, 650 lbs. wr't iron, 5 sheets emery-cloth, 8 wood-truck collars, 20 lbs. cellar-bolts, 12 ass't files, 18 lbs. stay-bolts, 3½ lbs. string-leather, 44 tons of coal.

Stock on hand in wrecking department.

1 p'r 22-in. blocks, 1 p'r 12-in. patent roller-blocks, 1 p'r 20-in. blocks, 2 p'r 10-in. common blocks, 2 p'r 16-in. blocks, 1 p'r telegraph-blocks, 1 single 20-in. blocks, 600 f't 6-in. manilla line, 1 snatch 20-in. blocks, 400 f't 5½-in. manilla line, 1 snatch 18-in. block, 600 f't 3¾ manilla wire, 200 feet old lashing, 200 f't 4¾ manilla wire, 1 switch-rope, 300 f't 2½ manilla wire, 1 p'r boiler-iron frogs, 2 claw-bars, 1 p'r Williamson patent frogs, 4 pinch-bars, 2 spike-mauls, 1 straight'ning sledge, 3 cold chisels, 1 keg T-rail spike', 1 p'r reverse hooks and lot of coupling, 1 hand-hammer, 1 hand cold chisel, 2 old axles, 3 oil-cans, 1 gal. oil, 2 feeders, 2 red lamps, 5 white lanterns, 1 saw, 4 wrenches, 1 ladder.

RIGGING SHOP.—3 p'rs 18-in. blocks, 1 p'r 17-in. blocks, 1 p'r iron blocks, 2 p'rs 16-in. blocks, 3 p'rs 14-in. blocks, 2 switch-ropes, 3 p'r 13-in. blocks, 1 p'r 12-in. blocks, 75 f't chain, 2 p'rs 8-in. blocks, 3 new blocks, ½ doz. block-shieves, 1 spike-maul, 2 hand-hammers, 2 cold chisels, 3 saws, 1 screw for stretching rope, 2 water-buckets, and 1 vice.

Property on hand in telegraph department.

26 switch-boards, 29 relays, 28 keys, 6 sounders, 24 registers, 27 local batteries, 25 tables, 1 desk, 3 coal-oil lamps, 1 red lantern, 4 chairs, 2 setts pulleys, 1 white lantern, 2 p'rs climbers, 2 p'rs plyers, 2 hatchets,
1 screw-driver, 1 ladder, 1 pike-pole, 1 hand-car, 1 relay wrapping-
478 machine, 10 lbs. mercury, 2 main batteries, (complete,) 7 local bat-

tery-crocks, 45 local battery porous cups, 135 lbs. blue vitriol, 1½ doz. thumb-screws, 2 lbs. insulated copper wire, ½ bale iron wire, (100 lbs.,) 1 lb. insulated relay-wire, 2½ carboys nitric acid, 25 lbs. register-paper, 3 carboys sulphuric acid, 70 lbs. message-paper, 10 platinas, (½ keg,) 40 lbs. nails, ½ keg 20 lbs. nails, 2 casks Wade insulators, 8 water-buckets.

Property on passenger-trains Nos. 3 and 4, T. Hanlon, cond'r.

1 switch-rope, 2 lever-jacks, 3 white lanterns, 1 hand-saw, 1 spike-maul, 1 red lantern, 1 hatchet, 1 ax, 2 lamp-fillers, 2 oil-cans, 1 broom, 1 red flag, 1 green flag, 1 bucket, 1 water-can.

Property on passenger-trains Nos. 3 and 4, J. P. Bentley, cond'r.

1 tool-box, 1 switch-rope, 1 bell-cord, 2 chains, 1 lever-jack, 2 levers, 1 ax, one spike-maul, 1 shovel, 1 saw, 1 hammer, 1 lard-oil can, 1 coal-oil can, 2 fillers, 2 red lanterns, 1 red flag, 1 green flag, 3 white lanterns, 1 pair frogs, 1 bucket, 1 safe, 1 ice-box, 1 chair.

Property on passenger-trains Nos. 3 and 4, D. Bonsall, cond'r.

1 switch-rope, 1 small chain, 1 shovel, 1 spike-maul, 1 bell-cord, 1 ax, 1 hand-saw, 1 hatchet, 1 monkey-wrench, 1 hand-hammer, 1 water-can, one broom, 1 chair, 1 tool-box, 1 ice-box, 1 red flag, 1 white flag, 1 green flag, 2 large chains, 2 lever-jacks and levers, 2 cold-chisels, 2 water-pails, 2 white lamps, 2 large oil-cans, 2 red lamps, 2 fillers.

Property on passenger-trains 5, 6, 7, and 8, W. W. Garrott, conductor.

2 red lamps, 2 red flags, 1 oil-can, 2 white lamps, 1 bell-cord.

Property on passenger-trains Nos. 5, 6, 7, and 8, A. J. McIntosh, conductor.

1 bell-cord, 1 train-box, 2 white lamps, 2 red lamps, 1 hammer, 1 oil-can and oil, 1 monkey-wrench.

Property on passenger-trains Nos. 5, 6, 7, and 8, S. W. Ellsworth, conductor.

1 red lantern, 2 red flags, 2 white lanterns, 1 can coal-oil, 1 can lard-oil.

479 Property on freight-trains Nos. 13 and 14, south division, Henry Williams, conductor.

1 switch-rope, 2 chairs, 2 lever-jacks, 1 spike-maul, 1 pinch-bar, 1 ax, 1 saw, 1 bucket, 1 claw-bar, 1 dipper, 1 broom, 2 white lanterns, 1 green flag, 2 red flags, 2 red lanterns, 1 oil-can, 1 lamp-filler, 6 links, 6 pins, 5 No. 8 brasses, 2 monkey-wrenches, 1 hammer, 1 hatchet, 6 draw-bar keys, 1 chisel, 20 lbs. spike, 5 brake-keys, 1 saw, 1 lamp-box, 1 chain, 1 line, 1 claw-bar.

13 and 14, H. D. Marckward, conductor.

1 pair lever-jacks and levers, 1 pair frogs, 1 monkey-wrench, 1 ham-

mer, 1 chisel, 3 chains, 1 water-bucket, 1 switch-rope, 1 chair, 3 white lanterns, 1 red lanterns, 1 broom, 1 ax.

13 and 14, Charles Lansford, conductor.

1 switch-rope, 2 chains, 2 lever-jacks, 4 levers, 1 spike-maul, 1 ax, 1 pinch-bar, 1 claw-bar, 1 pair frogs, 1 hand-saw, 1 water-bucket, 1 broom, 4 white lamps, 2 red lamps, 2 green flags, 2 white flags, 1 oil-can, 1 lamp-filler.

Property on freight-trains Nos. 9 and 10, middle division, J. H. Sullivan, conductor.

3 white lamps, 2 red lamps, 2 lever-jacks, 1 spike-maul, 1 ax, 1 hand-saw, 1 claw-bar, 1 switch-rope, 1 chain, 1 oil-can, 1 red flag, 1 white flag, 1 green flag.

Freight-trains No'. 11 and 12, north division, D. Hill, conductor.

1 switch-rope, 2 lever-jacks and levers, 1 pinch-bar, 1 spike-maul, 2 chains, 1 hammer, 1 monkey-wrench, 2 oil-cans, 3 white lanterns, 2 red lanterns, 1 red flag, 1 green flag.

Property on freight-trains No'. 11 and 12, north division, T. Neat, conductor.

3 white lamps, 1 red lamp, 2 side lamps, 1 switch-rope, 1 shovel, 1 hammer, 1 spike-maul, 1 monkey-wrench, 1 lever-jack, 2 large chains, 1 stove.

480 Inventory of materials, tools, &c., on hand in bridge department.

21 claw-bars, 29 pinch and pry bars, 6 small hand-bars, 27 pick-axes, 6 stone-picks, 24 shovels, 10 cross-cut saws, 17 sledge-hammers, 10 spike-mauls, 42 large wrenches, 3 monkey-wrenches, 17 cant-hooks, 10 cold-chisels, 4 punches, 8 grindstones, 17 axes, 11 oil-cans, 26 doubled-shaved block, 4 snatch-blocks, 12 single-shaved blocks, 550 f't 1-in. line, 7 jack-screws, 620 f't 1½-in. line, 10 crow-bars, 200 f't ¾-in. line, 3 stone-hammers, 525 f't 2-in. line, 1⅝ kegs of 4-in. spikes, 50 f't ⅝-in. line, 4 kegs of 6-in. spikes, 215 f't ⅞-in. line, 2 1/10 kegs of 5-in. spikes, 64 f't 2¼-in. line, ½ keg of T-rail spikes, 400 f't miscellaneous line, 1 keg 8d. cut-nails, 6½ kegs 10d. nails, 11 lbs. solder, 3½ kegs 20d. nails, 3 set-hammers, 4 kegs 40d. nails, 6 lanterns, 5 wheelbarrows, 7⅜ kegs 4d. nails, 18 red and white flags, 170 lbs. set-slips and wedges, 6 hand-drills, 5 hand-hammers, 9 water-buckets, 5 buckets, 11 churn-drills, 3 large blasting-drills, 5 chain-clevises, 8 large chains, 10 straight-edges, 12 stone-patterns, 17 lime-boxes, 2 sand-screens, 5 adzes, 1 hatchet, 1 hand-saw, 3 iron rollers, 4 derrick-masts, booms, and power-greasing to each, 1,700 f't of iron guy-rods, 2 crab-windlasses, 3 iron hoes, 2 flat-boats, 15 stoves, 8 augers, 1½ ba'l of mineral paint, 1 keg of yellow ochre, 1 ba'l of black paint, 4 boxes of tin, 2 sets of stone-nippers, ½ bundle oakum, 2 sacks hair, 1 pile-driver, 4 boxes of glass, 1 office-desk, 7 lbs. leather, 5 lbs. rivets, 5 lbs. yarn-packing, 2 lbs. rubber, 3 leather hose, 2 soldering-irons, 1 canvas-hose, 1 fire-pot, 4 crane-valves, 18 small bolts, 75 f't hoop-iron bands for water-pipe, 250 f't (lineal) of wood water-pipe, 78,024 f't pine lumber, 1,518 f't round oak and poplar, 168,351 f't oak lumber.

Inventory of property on hand in road-master's department, southern division.

1,000 f't switch-ties, 586 cords unsawed wood, 1,148 cross-ties, 480 cords sawed wood, 1,500 f't fencing-plank, 81 shovels, 53 picks, 26 claw-bars, 30 cold-chisels, 14 punches, 48 tamping-bars, 29 spike-hammers, 11 chop-axes, 43 lining-bars, 15 sledge-hammers, 9 hand-saws, 3 cross-cut saws, 5 hand-hammers, 4 hand-axes, 9 monkey-wrenches, 12 white lanterns, 6 track-hooks, 10 red flags, 2 red lanterns, 7 tape-lines, 16 2-gal. oil-cans, 16 track-gauges, 13 adzes, 6 1-q't oil-can, 1 grindstone, 2 brace and bitts, 3 augers, 4 water-buckets, 4 water-cups, 1 track-level, 9
481 pry-bars, 5 truck-jacks, 10 S wrenches, 3 punches and dies, 3 grubbing-hoes, 4 scythes, 3 tool-boxes, 1 switch-rope, 1 block and ropes, 4 chains, 3 jacks, 1 desk.

BLOOMINGTON DIVISION.—100 bridge-ties, 3,046 cords long wood, 150 cross-ties, 375 cords cut wood, 260 ties, 8 kegs of spike, 4 pe. timber', 100 f't, 35 switch-ties, 50 f't crossing-boards, 80 shovels, 55 picks, 3 pick-handles, 1 red flag, 2 red lamps, 18 white lamps, 34 claw-bars, 70 tamping-bars, 30 long bars, 22 pry-bars, 44 spike-hammers, 7 punches, 4 spike-hammer handles, 9 axes, 22 sledge-hamers, 1 hand-ax, 3 hand-hammers, 2 cross-cut saws, 3 hand-hammer handles, 7 hand-saws, 2 track-levers, 12 oil-cans, 10 stub-scythes, 15 track-gauges, 10 small cans, 9 monkey-wrenches, 42 cold-chisels, 3 S wrenches, 1 spike-set, 13 adzes, 2 adze-handles, 1 tape-line, 1 cant-hook, 3 chains, 3 jacks, 1 tool-box, 1 desk, 1 hand-car wheel, 2 target and rod, 4 switch-stands.

LAFAYETTE DIVISION.—988 cords of long wood, 400 ties, 350 cords of cut wood, 2,000 f't of lumber, 8 kegs spikes and 500 lbs. switch-castings and fixtures, 64 shovels, 53 picks, 42 tamping-bars, 36 spike-mauls, 36 claw-bars, 12 sledge-hammers, 40 lining-bars, 56 cold-chisels, 18 pry-bars, 12 punches, 18 adzes, 12 track-gauges, 15 axes, 15 white lamps, 12 oil-cans, 15 monkey-wrenches, 12 saws, 10 brush-hooks, 8 grindstones, 3 chains, 24 red flags, 4 lever-jacks, 1 switch-rope, 4 cant-hooks, 2 iron-plate frogs, 10 kegs spikes, 1½ doz. ax-handles, 2 red lanterns, 1½ doz. maul-handles, 2 white flags, ½ doz. sledge-handles, 1 tamping-bar, 2 T-rail frogs.

NORTHERN DIVISION.—1,853 cords of long wood, 440 f't pine fencing, 593 cords of sawed wood, 24 switch-chains, 6 T-rail frogs, 1 tool-box, 190 splices, 2 stoves, 2 set of switch-irons, 4 brush-scythes and swaths, two scythe-swaths, 4 brush-scythes and swaths, 1 brush-hook, 10 line-bars, 4 gauges, 2 shovels, 1 claw-bar, 1 cant-hook, 1 raising-bar, 17 red flags, 2 lanterns, 2 hand-saws, 4 monkey-wrenches, 21 pick-handles, 5 spike-mauls and handles, 11 adze-handles, 9 picks, 4 punches, 14 maul-handles, 14 cold-chisels, 2 old spike-mauls, 2 sledges, 2 cold-
482 chisels, 1 ax, 5 oil-cans, 5 switch-locks, 1 padlock, 2 hand-axes, 1 keg nails, 1 keg spikes, 1 wheelbarrow, 1 rope, 94 shovels, 91 tamping-bars, 38 picks, 19 gauges, 16 pry-bars, 30 claw-bars, 50 lining-bars, 39 spike-mauls, 13 chopping-axes, 70 cold-chisels, 15 hand-axes, 22 punches, 19 adzes, 19 sledges, 21 red flags, 8 grub-scythes, 11 wrenches, 5 straightening-hooks, 19 large oil-cans, 6 padlocks, 15 tool-boxes, 19 small oil-cans, 2 red lanterns, 9 hand-saws, 15 shovels, 9 white lanterns, 11 grindstones, 1 claw-bar, 1 lining-bar, 1 ax, 1 hand-ax, 2 spike-mauls, 4 cold-chisels, 1 gauge, 3 picks, 1 flag, 4 red lamps, 2 oil-cans, 1 chain, 2 switch-ropes, 1 tool-box, 4 lever-jacks, 1 wrench, 1 T-rail block, 3 anvils, 4 sledges, 55 lbs. swedges, 143 bu. coal, 2 stop-posts, 100 telegraph-poles, 14 switch-rods, 1 tape-line, 1 desk.

Exhibit B.—Referred to in receiver's report.

Receipts and disbursements of cash made by Ja's F. Joy, receiver of the Louisville, New Albany and Chicago Railroad Company, from October 1, 1868, to December 31, 1868, inclusive.

RECEIPTS.

From D. D. Williamson, trustee		$48,112 50
From freight earnings	$112,079 39	
From passenger earnings	83,919 79	
From mail earnings	1,632 32	
From express earnings	6,354 83	
From telegraph earnings	610 33	
		204,496 66
Total receipts		252,709 16

DISBURSEMENTS.

For office and station services	17,229 10		
For flag sartch and watchmen	809 06		
For train service	9,612 01		
For locomotive service	10,524 88		
For fuel	18,921 18		
For preparing fuel	2,883 35		
For oil, waste, and tallow	2,415 36		
For repairs of engines	10,693 13		
For repairs of cars	9,883 69		
For repairs of buildings	6,285 79		
483 For repairs of bridges	8,503 32	252,709 16	
For repairs of roadway	49,919 39		
For new iron	16,068 39		
For ties	8,220 26		
For operatives of telegraph	2,613 73		
For stationery, advertising	1,175 17		
For legal expenses	216 50		
For injuries to animals	880 75		
For damage on freight	220 66		
For earnings refunded	75 03		
For taxes, rent, and insurance	4,677 19		
For machine-shop expenses	1,003 73		
For engine and car hire	1,499 86		
For United States tax	2,594 50		
For discount and exchange	79 32		
Ordinary expenses	187,800 35		
For Bloomington depot	2,903 77		
For judgment of Kent, Crawford and Kent	10,000 00		
		200,710 12	
Balance equal to cash on hand		$51,999 04	

Comes also Lazarus B. Wilson, by Huff & Wilson, his attorneys, and files his petition, verified by affidavit, in these words:

STATE OF INDIANA, *White County, ss:*

White common pleas, January term, 1869.

DOUW D. WILLIAMSON
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO RAILroad Comp'y and others.

Lazarus B. Wilson, being duly sworn before the undersigned, a notary public of Tippecanoe County, in said State, on his oath says
484 he is a creditor of the said Louisville, New Albany and Chicago Railroad Company, and as such hold' and owns a judgment against said company recovered in the circuit court of Putnam County, in said State, on the 29th day of December, 1858, for the sum of two thousand nine hundred and eighty-eight dollars, and for costs, which judgment is in full force and wholly unpaid, and was recovered against said company by its former corporate name, "The New Albany and Salem Railroad Company," a transcript whereof is herewith filed and made a part of this affidavit, marked X, and said affiant further says that he is the Lazarus B. Wilson mentioned in the complaint in the above-entitled cause, and that he was originally made a party therein, and was duly summoned as such; that he was about to make defense to said action at the beginning of the present term of this court, and attended on the judicial day of the term for that purpose, when he found that on the first day of the term the plaintiff's counsel, in the absence of affiant and his attorneys, had procured an order to be entered dismissing said action as to affiant; that said order was procured without the consent or knowledge of affiant, and he now says that he is interested in mortgaged premises described in the complaint, and in the other property of the said company as such judgment-creditor, and on account of such interest he is a proper and necessary party to said action. Wherefore, he prays for an order of this court to re-instate him as a party defendant in the said action, and that he be allowed to made such defense thereto as he might have made had no such order of dismissal been taken therein.

L. B. WILSON.

Subscribed and sworn to before me this 18th day of January, 1869. Witness my hand and notarial seal at Lafayette, in said county of Tippecanoe.

[SEAL.] D. W. LANGDON,
Notary Public.

Ex't X, referred to in foregoing affidavit.

STATE OF INDIANA, *Putnam County, sct:*

Pleas begun and held before the honorable Solomon Claypool, judge of the sixth judicial circuit of the State of Indiana, at the term
485 thereof, begun and held in the court-house in the town of Greencastle, in said county of Putnam, on Monday, the fourth day of October, in the year one thousand eight hundred and fifty-eight, and continuing from day to day by adjournment until Tuesday, the twenty-eighth day of December, in said year, when the following proceedings were had, to wit:

Order.

LAZARUS B. WILSON
vs.
THE NEW ALBANY AND SALEM RAILROAD COMPANY. } Civil action.

Be it remembered that at said term of court, it being the said twenty-eighth day of December, the following proceedings were had herein, to wit:

Come now the parties herein by their attorneys, and the defendant now files written reasons in support of the motion to dismiss this cause for want of jurisdiction, and the court, having heard the argument of counsel, do overrule said motion to dismiss, to which ruling the defendant excepts, and thereupon the defendant moves the court for a new trial, and files written reasons therefor, and the motion for a new trial being argued by counsel, the court do overrule said motion for a new trial, to which ruling the defendant excepts, and twenty days' time is given the defendants to file a bill of exceptions herein.

Decree.

It is therefore considered by the court that said plaintiff recover of said defendant the sum of five thousand nine hundred and eighty-eight dollars, ($5,988.00,) together with his costs and charges in this behalf expended, taxed at dollars and cents.

Record signed December 29th, 1858.

(Signed) SOLOMON CLAYPOOL.

And afterwards, to wit, on the 30th day of March, 1859, by order of plaintiff, the following execution was issued upon the foregoing judgment, which, with the sheriff's return thereon endorsed, is in these words and figures, to wit:

Execution.

The State of Indiana to the sheriff of Putnam County:

Whereas Lazarus B. Wilson recovered judgment against the
486 New Albany and Salem Railroad Company, on the 29th day of December, 1858, in the circuit court of Putnam County, for five thousand nine hundred and eighty-eight dollars and no cents, upon which there is due six thousand and seventy-eight dollars and eighty-three cents, principal and interest, and sixteen dollars and ninety cents costs accrued to this time.

You are therefore commanded to levy said sums of money of the property of the defendant in your county subject to execution, and have the money at the clerk's office, to satisfy said judgment, interest, and cost, and return this within one hundred and eighty days, with your doings thereon.

Witness, Jacob McGinnis, clerk of said court, and the seal thereof, affixed at Greencastle, this 30th day of March, 1859.

[L. S.] JACOB McGINNIS, *Clerk.*

Sheriff's return.

On said execution is endorsed the following return, to wit:

March 30, 1859, the within execution came to hand, and return the same the same day, after diligent search made, and no property found whereon to levy said execution.

J. R. MAHAN, *Sheriff.*

Credit of clerk.

GREENCASTLE, PUTNAM COUNTY, IND.,
March 30, 1859.

STATE OF INDIANA,
Putnam County, sct:

I, Jacob McGinnis, clerk of the circuit court within and for said county, certify that the foregoing is a true and complete copy, from the record on file in my office, of the judgment, the execution issued thereon, and the sheriff's return thereto, in the cause wherein Lazarus B. Wilson is plaintiff and the New Albany and Salem Railroad Company is defendant.

Witness my hand and the seal of said court, at Greencastle, this 30th day of March, 1859.

[L. S.] JACOB McGINNIS, *Clerk.*

487 Clerk's fees: transcript, $1.00; costs, &c., 50—total, $1.50. Received payment.

J. McGINNIS, *Clerk.*

Praying to be re-instatated as party defendant herein, and therefore moves the court for a rule upon the plaintiff to show cause why the said Wilson should not be made a party defendant, and the plaintiff files his written exceptions in these words:

Plaintiff's exceptions to granting rule.

In the White common pleas court, January term, 1869.

DOUW D. WILLIAMSON
v.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

The plaintiff objects to a rule being made upon the application of Lazarus B. Wilson for him to be made a party to this action, because said application does not state facts sufficient to entitle said Lazarus B. Wilson to be made such party to the said petition, and objects to said Lazarus B. Wilson being made a party.

And the said exceptions are argued by counsel, and day is given.

HARRY CRAWFORD, CHASE & WILSTACH,
Attorneys for Plaintiff.

And afterwards, to wit, on the tenth judicial day of the term last aforesaid, it being the 21st day of January, 1869, the following proceedings were had in said cause, to wit:

White common pleas court.

DOUW D. WILLIAMSON
v.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company.

Comes now the plaintiff, and the court overrule the motion of
488 Lazarus B. Wilson to be made a party hereto, and dismisses his petition, to which ruling of the court the said Wilson, by counsel, excepts, and the plaintiff dismisses his action as to the defendants, Morris McDonald and James M. Rawlins, and now comes John T. Huff and files his cross-bill herein, in these words:

STATE OF INDIANA,
White County, ss:

White common pleas court, January term, 1869.

JOHN T. HUFF (IMPLE'DED WITH OTHERS)
ads.
DOUW D. WILLIAMSON.

The defendant, John T. Huff, for answer and counter-claim, as against his co-defendant, the Louisville, New Albany and Chicago Railroad Company, and the plaintiff and the mortgagees, whom he represents in this action, says:

That on the 6th day of November, 1857, this defendant, by the consideration of the Tippecanoe circuit court, in said State, recovered a judgment against the said defendants, the Louisville, New Albany and Salem Railroad Company, by its then corporate name of the New Albany and Salem Railroad Company, for the sum of three thousand and eighty-three dollars and fifty cents, besides the costs of the action upon which the recovery was had, and the said Huff avers that said claim was and is for the right of way and damages incident thereto for the track of said railroad company, and he hereby offers to vacate the sale of the real estate made to him upon the condition that the court order the receiver of said company to pay his said claim, and no further charges; that said claim being for the right of way and damages incident thereto of said company, has a priority of equity over any claim of the mortgage-creditors of said road.

That on the 25th day of February, 1864, the defendant in said judgment paid thereon the sum of five hundred and twenty-five dollars and six cents, ($525.06,) which was credited on said judgment. That the balance of the said judgment, and the interest thereon, and the costs of said action, remained in full force, and wholly unpaid, and still so remains.

That on the 13th day of March, 1866, this defendant caused an
489 execution to issue on said judgment to the sheriff of Tippecanoe County, in said State, upon which the said sheriff levied upon the following-described real estate, situated in said last-named county, to wit: Lots numbered one hundred and fifty-six (156) and one hundred and fifty-seven (157) in Cabot and Huntington's addition to the town—now city—of Lafayette; that after said levy was made, and notice of sale had been given by the said sheriff, the defendant, the New Albany and Salem Railroad Company, took steps to have the sheriff restrained

from selling said real estate, and to have the said levy vacated; but not having the proper and necessary complaint prepared upon which to base the application for such restraint and vacation, it was proposed by the attorney of the said railroad company that, if this defendant would suspend further proceedings on said execution, the said company would prepare a complaint such as would present the question as to whether the property levied on was embraced in the description of the property covered by the mortgage to the plaintiff herein. Upon this proposition proceedings on said execution and levy were postponed until it became too late to effect a sale on the said execution, and it was returned by the said sheriff, and so no further action was taken until the 27th day of August, 1868, when a venditioni exponas was issued at the instance of the defendant, upon which last writ such proceedings were had by the said sheriff; that on the 19th day of September, 1868, the said real estate was exposed to sale, as the law directs, and was bid off by this defendant for the sum of three thousand three hundred and thirty-three dollars and thirty-five cents, that sum being more than two-thirds the appraised value of said property. And the plaintiff refers the transcript of his said judgment now on file with his affidavit presented herein, on the 12th day of January, 1869, and makes the same a part of this pleading, as follows: [Said transcript is elsewhere inserted in this transcript. —Clerk.] In the meanwhile, after the said vendi had been issued, and before the said sale, the suit in this behalf had been commenced, and process of summons had been served upon this defendant, and on the Tuesday next following the said sale, this court, on the motion of the plaintiff herein, appointed a receiver in this cause to take charge of the entire assets of the said railroad company, as well those not embraced in the said mortgages as those covered by them. At the time the receiver was appointed as aforesaid the sale so made by the sheriff had not been completed by the payment of the money required upon the said bid of this defendant, and no deed had been executed by the
490 sheriff in pursuance of the said sale, and this defendant was advised that inasmuch as the order for the appointment of the receiver had intervened, it would be improper for him to meddle with the title to said property until the matter should be brought before this court.

This defendant shows the said real estate is occupied by a large grain-house contiguous to the Wabash and Erie Canal, a short distance from the main track of the railroad and from the passenger and freight depot of the said company, in the said city of Lafayette, and approached by a side track from the said main track. Said real estate is occupied by a large grain-house with fixtures and appointments for storing, shelling, receiving, and shipping grain, as well by the said canal as the said railroad, and the said house, fixures, and grounds have been, from the time of their construction, when used at all, used by tenants under lease from the said railroad company, in the business common to warehousemen and commission merchants, and the only relation of the said railroad company to the business for which they were so used was that of lessor, and hence this defendant was advised and he believes that the said real estate formed no part of the property covered by the mortages upon which this suit is founded, but that the same was and is subject to the lien of the said judgment of this defendant.

Should this be so, and should the court so hold, upon the hearing of this cause, this defendant admits that upon the title being quieted under sale to this defendant, the amount for which it was sold should be credited on said judgment, and the balance remaining unpaid on

account of said judgment, amounting to about two thousand, would still remain unpaid. But should it be determined that the said real estate is covered by the deeds of trust held by the plaintiff herein, this defendant claims that the entire judgment remains unpaid except the credit of $525.06 paid thereon on the 25th day of February, 1864, as above shown. As to the balance that so remains of the said judgment, this defendant says that he is entitled to its payment out of the assets in the hands of the said receiver, and he charges that the plaintiff herein, as the trustee of the holders of the said bonds, and at their instance, has had the use, earnings, and profits of the property embraced in the said trust-deeds for about twelve years, and that during the said time the earnings of said property have amounted to sufficient to pay and satisfy the entire amount of all the bonds of the said railroad company that were secured by the said trust-deeds, or, if the earnings and
491 profits have not been sufficient for that purpose, they might have been made so by prudent management of the said property, and this defendant charges that if there is any deficiency in the funds derived from said property by the said trustee in the payment of said bonds, such deficiency is chargeable to the reckless management of the said trustee of the holders of said bonds. The defendant further shows that there are about forty miles of the road of the said company between Michigan City, in said State, and the east line of the State of Illinois, not embraced in the said trust-deeds, and not covered by any mortgage or encumbrance, now under the control and management of the Michigan Central Railroad Company, a corporation organized under the laws of the State of Michigan, and operating a railroad from Detroit, in the latter State, in the direction of Chicago, in the State of Illinois, which said last-named company now is and ever since the 1st of July, 1851, has been using the said forty miles of said road as a part of her line of road between Detroit to Chicago, and this defendant charges that the said forty miles of road, with its fixtures and appurtenances, and a reasonable rent for the use of the same during all said time, are assets of the said Louisville, New Albany and Chicago Railroad Company, and applicable to the debts of the said last-named company, and that to arrive at a fair accounting herein it will be necessary that the said Michigan Central Railroad Company be made a party to the suit; or, if this cannot be done, that the persons who are managing said forty miles of road, and who are within the jurisdiction of this court, be made parties; and this defendant charges that Joy, the receiver appointed herein, is the acting president of the said Michigan Central Railroad Company, and as such is directing the management and operation of the said forty miles of road, and that he is largely interested in the business and stock of the said Michigan Central Railroad Company, and, as this defendant is informed and believes, is a holder of the bonds secured by said trust-deeds.

This defendant charges that the whole business connected with the management of the Louisville, New Albany and Salem Ra
trustees and by the said Michigan Central Railroad Company has been so conducted as to leave the ordinary creditors of the said Louisville, New Albany and Chicago Railroad Company in utter ignorance of its results, and that therefore this defendant cannot state with accuracy, even proximately, the accounts as they should be rendered, but
492 he charges that no just decree can be made, nor can any fair account be had, unless the plaintiff be required to state fully the entire business transacted by him while managing the said trust-property, in such detailed form as will enable this court to take such ac-

count, nor does this defendant know, from any statement of the said trustee or otherwise, what amount of property passed into his hands as such trustee when he took upon himself the management of the property covered by the said trust-deeds, nor can this defendant state the amount or description of the property turned over to the receiver in this cause by the said trustee; but this defendant charges that those facts are, or ought to be, in the knowledge of the plaintiff, and that he ought to be stayed in his proceedings in this suit until he shall have furnished the same, and spread them upon the record of this cause. And this defendant, upon the foregoing statement of facts, prays that this may be taken as a counter-claim against the plaintiff herein, and also against the defendant, the Louisville, New Albany and Chicago Railroad Company, and that the said last-named company be required by summons to answer, and that the plaintiff also be ordered to answer this counter-claim; also that the Michigan Central Railroad Company be made a party defendant to this action, and be required to make full and complete answer touching all the matters herein before charged as to her occupation and use of the said forty miles of road from Michigan City to the east line of Illinois; that both the plaintiff and the Michigan Central Railroad Company be required to set forth full, complete, and accurate accounts as to the property managed or controlled by them respectively, and that the plaintiff, as trustee, be required to state the amount and description of all the property that passed into his hands as such, the time or times at which he took possession or control of the same and every part thereof, its value, how it was used or disposed of, the income derived from such use or disposition, with a schedule of the property, money, and credits delivered by him to the said receiver.

That the court decree that the title to the said real estate sold on the defendant's execution be held free from any and all claims of the parties to this action, and that the balance due this defendant on his said judgment be decreed to be paid.

That the court grant to this defendant such relief in the premises as may be just and proper.

HUFF & LANGDON,
Attorneys for Def't John T. Huff.

493 And also comes William C. Wilson, administrator of John Wilson, deceased, and Isaac N. Higman, executor of Robert Higman, deceased, and file their answer and cross-complaint, and interrogatories therewith, addressed to the plaintiff in those words:

Answer and cross-complaint of Wilson and Higman.

STATE OF INDIANA, *White County, ss:*

White common pleas, January term, 1869.

DOUW D. WILLIAMSON
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO RAILroad Comp'y and others.

The answer and cross-complaint of Isaac N. Higman, executor of Robert Higman, deceased, William C. Wilson, administrator of the estate of John Wilson, deceased, to the complaint in the above-entitled cause.

The said Higman and Wilson show that they all, in their respresentative relations above stated, the holders and owners of stock in the Louisville, New Albany and Chicago Railroad Company to the amount mentioned in their respective affidavits filed herein, on the 12th day of January, 1869, which affidavits are referred to and made a part of this answer and cross-complaint as follows:

"*Affidavit of Higman.*

"STATE OF INDIANA, *White County, ss:*

"White common pleas, January term, 1869.

"DOUW D. WILLIAMSON
v.
"THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al.

494 "Isaac N. Higman, being duly sworn in open court, on his oath says he is the executor of the will of Robert Higman, late of Tippecanoe County, in said State, deceased; that the said decedent was the owner at his death, and his estate now is the owner, of twelve shares of fifty dollars each of the capital stock of said company, for which the decedent held, and said affiant, as his executor, holds, a certificate duly and regularly issued by the said company on the 15th day of February, 1855, by its then name of the New Albany and Salem Railroad Company, which certificate is hereto attached, marked A, and made part of this affidavit; so said affiant says he is, as such executor, interested in the subject-matter of the above-entitled cause as one of the corporators of said company. He further says that he has reason to believe, and does believe, that there is collusion between the plaintiff and others in whose interest he sues, and the persons who have hitherto managed the business and conducted the litigation of said company, whereby the stockholders are in danger of having their rights neglected and their interests sacrificed. That it is true, as stated in the complaint in said cause, that there has been no meeting of the directors of said company for about or more than eight years last past, and there is not, as affiant believes, any attorney employed by said company to defend said company in this action, and that said company have a right to demand that a joint account be taken of the matters involved in this suit. This affiant, as one of said stockholders, with other holders of such stock, has employed William C. Wilson and Huff & Langdon to appear to said action for said company, and to make such defense thereto as the interests of the company may require. Said affiant is informed and believes that upon a just account being taken between the bondholders of said company and the said company, it will be established that a portion of their bonds are satisfied, the mortgaged property having been for several years before the commencement of this action in the hands of the plaintiff, as the trustee of the said bondholders, whose duty it was to apply the use and earnings of said property to the satisfaction of the said bonds; and that no account of the said use of earnings has ever, to the knowledge of affiant, been exhibited to the said company, or its stockholders; wherefore affiant prays that, should the court hold that under the facts said attorneys are not authorized to appear for said company as a corporation, this affiant may be allowed to become a party to the said action, and make defense thereto for himself and in behalf

495 of other holders of stock of said company who may choose to avail themselves of such defense.

"J. N. HIGMAN.

"Subscribed and sworn to in open court, January 12, 1869.
"DANIEL D. DALE, *Clerk*,
"By JOHN S HURTT, *Deputy*.

"Affidavit of W. C. Wilson.

"W. C. Wilson, administrator of John Wilson's estate, represents that he is, as such administrator, the owner of twenty-four shares of the stock of said company, and, on being duly sworn, on oath says that his interests, like those of the above-named Higman, requires that defense be made to said action, and that he believes the facts in the above affidavit of Higman to be true.

"W. C. WILSON.

"Subscribed and sworn to before me this 12th day of January, 1869.
"DANIEL D. DALE, *Clerk*,
"By JOHN S. HURTT, *Deputy*.

"*Certificate referred to, marked A, in the foregoing affidavit.*

"Ex. A.—New Albany and Salem Railroad Company, No. 7,843, twelve shares.

"It is hereby certified that Robert Higman is the proprietor of twelve shares in the capital stock of the New Albany and Salem Railroad Company, which stock is transferable only on the books of said company upon the return of this certificate.

"In testimony whereof the president and secretary of said company have hereunto set their hands, at the city of New Albany, this 15th day of February, 1855.

"W'M W. TUTTLE, *Ass't Secretary*.
"JAMES BROOKS, *President*."

And these defendants further show that the said several shares of stock so held by them were by the respective decedents fully paid in and the said decedents thereby became fully invested with all the rights of individual corporators in the said company, and so continued until their respective deaths, since which time these defendants, as the representatives of the said decedents, have held and possessed the rights of individual corporators in the company; they charge that the plaintiff,
496 as trustee under the several deeds of trust mentioned in the complaint, or under some of said deeds, went into the possession of the property and franchises covered by said deeds in the year 1859, and from that time till the filing of the complaint herein he continued in such possession, and during all said time received the incomes derived from the use of the said property and franchises. The railroad of the said company, when said plaintiff so went into possession, was fully completed and in running order, being supplied with all the necessary appointments, machinery, and fixtures for the running and business of such road. Its earnings were largely in excess of all the necessary outlays connected with its management and operation, so much so that had said plaintiff, in the faithful discharge of his trust under said

deeds, justly applied the said excess of said earnings, the entire interest of the debts outstanding against the company and covered by said deeds of trust might have been kept down and paid as it matured. These defendants have no means of stating what was the amount of the earnings of said road during the time it was operated by the plaintiff as such trustee, nor can they state what the disbursements were for running expenses and other outlays incident to the operation of the road; but these facts are or ought to be known to the plaintiff, and these defendants ask that he may be required to furnish a statement, and showing particularly and fully the entire account of the business and receipts and disbursements connected with his said trust while he so held said property and franchises.

These defendants believe and charge that, upon a showing of the transactions of the plaintiff in respect to the said property and franchises, it will be found that said plaintiff, at the instance of some of the holders of bonds of the company, and without any power or authority derived from the said company, made disbursements and outlays for objects not embraced in any trust conferred upon him by the said deeds of trust, and that the amount of funds derived from said road and so misapplied would equal the entire amount of the bonds held by the plaintiff, principal and interest, and all the interest upon the bonds held by the persons who were consenting to the said misapplication. These defendants charge that upon a fair accounting it will be shown that the plaintiff, during his said management of said trust property, made use of a part of the funds derived from his said trust in and about his private and individual enterprises and speculations, from which he derived great gains, for which he has made no accounting, and which he now claims as his own exclusive property. In these speculations,
497 the defendants believe, some of the holders of the bonds of the company have been sharing, and that the gains thus derived from such trust-funds would, if applied to objects of the trust, greatly reduce the bond debt of the said company. Hence these defendants say that before a just accounting can be had, or even a complete issue can be presented in this action, it will become necessary that discovery be made by the plaintiff as to the entire business connected with his said trust. Some of the funds of the trust, with the consent and by the procurement of some of the bondholders, were disbursed to another corporation or company of individuals denominated the Michigan City Harbor Company, but what amount was thus disbursed, and at the instance of which of the holders of the bonds of the said railroad company, these defendants are ignorant, but the plaintiff has full knowledge respecting this disbursement, and can, if required by this court, state the names of the bondholders who consented to this diversion of the trust-funds, and can state how much was thus disbursed, and at what time, and from what funds. These defendants charge that the disbursements so made were a diversion of the funds of the trust to the amount of the disbursements; and that the holders of the bonds of the said railroad company who consented to or requested this diversion are chargeable with the amount thereof, to be deducted from whatever claim they may establish under the said trust-deeds, and that for the placing that charge upon them they will have to be made parties to this action, which these defendants pray may be done upon a disclosure of their names to the court by the plaintiff. These defendants are ignorant as to what amount of bonds was issued under the provisions made by the said railroad company for creating the debts secured by the said trust-deeds, and therefore the request that the plaintiff be held to strict

proof that all the bonds of each of the five series mentioned in the complaint were negotiated as therein charged, and as a matter of law these defendants say that the said railroad company had no power to issue bonds of the company and make them chargeable upon the franchises of the said railroad company, as by the deeds of trust mentioned in the complaint it is claimed the said railroad company did; and therefore these defendants insist, that although the bonds that were negotiated by the said company may be in every respect good as debts against the corporation to the extent that they were negotiated, the said several deeds of trust afford to them no sufficient lien upon the com-
498 pany's property and franchises to entitle them to the foreclosure they seek by this action; but should the court hold that said trust-deeds are sufficient for such foreclosure, these defendants ask that the matters of fact hereinbefore stated be taken as a cross-bill of these defendants as stockholders of said railroad company, and of all other persons standing in like relation who may wish to avail themselves of a defense in this action as such stockholders, to the extent of the respective shares they hold and own in the said railroad company; and that a complete defense may be made, so as to enable the court to take a just account in the premises, these defendants now pray the court for leave to file with this cross-complaint a general denial of the allegations contained in the original complaint herein. So that the plaintiff, and those for whom he sues, may be required to establish by proof the amount of the debts to which said several trust-deeds are applicable as security.

These defendants further show that there are some thirty-four miles of the railroad of the said company, being all that part lying between Michigan City and the line of the State of Illinois not covered by any of the descriptions of the said several trust-deeds; that concerning that part of said company's road which is now operated by the Michigan Central Railroad Company, a corporation organized under the laws of the State of Michigan, it is not definitely shown by the complaint what, if any, disposition is sought or intended to be made by the bond-creditors of the company in this action; but if any action should be sought at any stage of this suit by the plaintiff, or those for whom he is trusted to dispose of the company's interest in that part of the said railroad, it will become necessary that the said Michigan Central Railroad Company should be imple'ded in this action; and these defendants pray for leave to so implead said last-named company, whenever in the progress of this cause it shall become necessary; and inasmuch as the order for the appointment of a receiver, as these defendants believe, is liable to a construction that might in some way affect the company's rights in that portion of the road, these defendants pray the court for a modification of said order so as to exclude from the receiver appointed the right to perform any act whatever in his office, as such receiver, that will in any manner affect the interests of the said Louisville, New Albany and Chicago Railroad Company, either present or prospective, as to the road from Michigan City to the said Illinois line.

These defendants pray that an account be taken by this court as to the number and amount of the bonds of the said defendant, the
499 Louisville, New Albany and Chicago Railroad Company, out-**standing and chargeable as liens under the said trust-deeds.**

Also an account of the funds and means of every kind at any time in the hands of the plaintiff as trustee under said deeds of trust derived from the trust property, and from the use of such funds by the said trustee plaintiff, or by any one of the persons who claim as holders of

the bonds of the company. That an account be also taken as to the application made by the trustee plaintiff, of all the funds he may have derived from said trust property.

That should it be ascertained that any part of such funds have been misapplied by the plaintiff, he be chargeable with such part of such funds as against any of the said bonds he may claim to hold and own; and should it turn out that others of the holders of such bonds have been consenting or privy to such misapplication, they be made parties to this action by name when their names shall be discovered, and be held chargeable as against any of said bonds they may hold, with the funds that may have been so misapplied.

And for such other and further relief in the premises as these defendants and others standing in like relation, who may avail themselves of the defense herein, may be entitled to.

W. C. WILSON, HUFF & LANGDON,
Attorneys.

Answer of Wilson and Higman.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al.

The defendants Higman, executor, and Wilson, administrator, for themselves as stockholders in said company, and in behalf of all others standing in like relation, deny each and every allegation in the complaint.

W. C. WILSON, HUFF & LANGDON,
Attorneys for Higman & Wilson.

Interrogatory addressed to plaintiff by Higman and Wilson.

White common pleas, January term, 1869.

500 DOUW D. WILLIAMSON
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Comp'y and others.

The defendants, Isaac W. Higman, executor, &c., and Willam C. Wilson, administrator, &c., file with their answers and cross-complaint herein, the following interrogatories against the plaintiff herein, to wit:

1. At what date and at whose instance did you take possession of the trust property embraced in the trust-deeds mentioned in the complaint?

2. What sum or sums of money derived from the trust property did you, or any person under your agency, while you held said property, pay or expend for the improvement of the Lake Harbor at Michigan, and to whom did you make such expenditure?

3. State how and to whom and for what purpose all your disbursements were made of monies received by you during your administration of said trust.

4. What are the names of the holders of the bonds of the said Louisville, New Albany and Chicago Railroad Company, who consented to the expenditure of the said trust-funds towards the improvement of the said Lake Harbor?

State the names of each of such bondholders. And the said defendants pray that the court may order the plaintiff to answer each of said interrogatories under oath, and place such answer on file by a day to be fixed by the court.

W. C. WILSON & HUFF & LANGDON,
For Higman & Huff.

And upon the plaintiff's motion, the report of the receiver is referred to the clerk of this court as a special master, to examine and report as to the same at the next term of this court, and said report is laid over to next term, with liberty for all parties to file exceptions thereto at such time.

And comes Jacob Markle, and asks the court by petition to be allowed to be made a party as a stockholder herein, and the court grant said motion, and leave is given to said Markle to be made a party hereto, by filing his cross-bill.

501 And thereupon the plaintiff asks that the defendant, the Louisville, Chicago and New Albany Railroad Company, be called, and though three times solemnly called, the said defendant comes not, but herein wholly makes default; and it is shown by the returns of the sheriffs of White and Tippecanoe Counties, Indiana, that the said corporation has been duly served with process to appear in this action more than ten days before the first day of the present term of this court, it is thereupon ordered, upon the motion of the plaintiff and the default of the defendant, that all and singular the matters in the complaint herein be taken as confessed by the said corporation, saving and excepting in such default all and singular the rights, equities, liens, claims, and priorities of every kind whatsoever of the said John T. Huff, W. C. Williamson, administrator of John Wilson, deceased, Isaac N. Higman, executor of Robert Higman, deceased, and Jacob Markel, and as to the assessment of damages against the said corporation, day's given, and thereupon comes John T. Huff, and files an affidavit for a change of venue, as follows:

Affidavit of Huff for change of venue.

STATE OF INDIANA, *White County, ss:*

White common pleas, January term, 1869.

DOUW D. WILLIAMSON *v.* THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al.	White common pleas court.

On this 21st day of January, 1869, personally appeared before the undersigned, a notary public in and for the county of Tippecanoe, in said State, John T. Huff, who being by me duly sworn, on his oath says he believes he cannot receive a fair trial in the above-entitled cause before the judge of said court, owing to the prejudice and bias of the said judge, wherefore he demands a change of the venue.

JOHN T. HUFF.

Subscribed and sworn to before me the date above written.

502 In testimony whereof I hereto set my hand and notarial seal, January 20, 1869.

[L. S.] B. W. LANGDON,
Notary Public.

And to the filing of said affidavit the plaintiff objects, and day is given.

And afterwards, to wit, on the 11th judicial day of the term last aforesaid, it being the 22d day of January, 1869, the following proceedings were had in said cause, to wit:

Order.

DOUW D. WILLIAMSON
v.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al.

Now again come the parties, and the court sustain the motion of John T. Huff for a change of venue herein, and the court appoint Hon. John M. La Rue, judge of the common pleas court of Tippecanoe County, to hear and determine this cause; and the said La Rue being now present, the court sets this cause down for a hearing at 2 o'clock this afternoon.

B. F. SCHERMERHORN, *Judge.*

Order.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al.

Now comes the Hon. John M. LaRue, appointed to try this cause, and come again the parties, and the plaintiff dismisses his action as to Selah Chamberlain, Thomas J. S. Hickson, James Haskell, Samuel K. Johnson, and Martin Beck, and pray that all allegations on his said complaint in reference to said parties may be stricken out; which is now ordered to be done; and on the motion of Huff, Higman, Markle, and Wilson, and by consent, it is ordered by the court that the original order made herein for the appointment of a receiver shall not
503 be construed so as to embrace, or in any manner to refer to, that part of the Louisville, New Albany and Chicago Railroad Company's road extending from Michigan City to the east line of the State of Illinois; and that the said receiver shall not in any manner, as such receiver, interfere therewith, the same not being embraced in the terms of said order of appointment.

Signed, January 23, 1869.

JOHN M. LARUE, *Judge.*

And on the same day, to wit, the 22d day of January, 1869, the following proceedings were had in said cause, to wit:

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

On the written motion of the plaintiff, which is in the words and figures following, to wit:

"*Order.*

"In the White common pleas court, January term, 1869.

"DOUW D. WILLIAMSON
vs.
"THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others. } Complaint to foreclose mortgage.

"The plaintiff moves the court that James F. Joy, the receiver in the behalf, be ordered to set apart and retain in his hands the sum of fifteen thousand dollars of the monies reported as in his hands at this time, to abide the order of this court, as a fund for the payment of all claims, demands, and the adjustment of all priorities and equities of John T. Huff, William C. Wilson, Isaac Higman, and Jacob Markel, to which they or either of them shall be found entitled upon the final settlement and adjustment of the said claims, demands, priorities, and equities of each and every of said parties.

"CRAWFORD & CHASE & WILSTACH,
"*Attorneys for Plaintiff.*"

504 The court order that the receiver in this action be directed and required, out of the monies which he now reports in his hands, to set apart and safely keep the full sum of fifteen thousand dollars, subject at all times to the order of the court, as a reserve found for the benefit of the intervening defendants, John T. Huff, William C. Wilson, administrator, Isaac N. Higman, executor, and Jacob Markel, to the end that the rights, equities, and claims of the said parties may not be prejudiced by any action of the plaintiff herein against the said corporation, defendant; and that upon full and final hearing the said sum of money may be distributed to any and all of such parties as may establish their claim and equity thereto as against the rights of the plaintiff and the bond creditors of said corporation. And the said Huff, Wilson, and Markel object to the court proceeding at this time to make an assessment of damages against the railroad corporation, defendant, and also move to continue this cause, which is overruled, and the said parties except; and thereupon, on the motion of the plaintiff, by Crawford, Chase & Wilstach, his attorneys, the court proceed to hear evidence offered by the plaintiff upon the assessment of damages and ascertainment of the amount of bonds issued, outstanding, and unpaid, which are included in the five several trust mortgages set out in the complaint herein, and necessary to be determined before rendering a decree of foreclosure upon the default of the said Louisville, New Albany and Chicago Railroad Company heretofore taken herein; and the court, having heard the evidence, find:

1. That the material allegations of the complaint herein are true; that the said Louisville, New Albany and Chicago Railroad Company was organized in 1847 by virtue of a public act of the general assembly

of Indiana; and that under said act of incorporation and subsequent acts amendatory thereof, the said defendant located and constructed a line of railway through from the city of New Albany, running through the counties of Floyd, Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, and La Porte to Michigan City, being of the length of about two hundred and eighty-eight (288) miles.

That on the 8th of February, 1851, the said defendant, by the then corporate name of the New Albany and Salem Railroad Company, executed and delivered to the plaintiff her certain trust-mortgage, under the signature of her president, and tested by her corporate seal, conveying all and singular the line of railroad made and to be made
505 from New Albany to Gosport, and being of the length of 113 miles or thereabouts, including the right of way and land occupied thereby, together with the superstructure and tracks thereon, engines, tenders, cars, tools, materials, machinery, and all other personal property appertaining thereto, together with the tools, rents, and income to be had or levied therefrom, and all franchises of the said corporation, to manage and operate the same in trust and as security for the payment of a contemplated issue of five hundred of one thousand dollars each, bearing interest after the rate of ten per cent. per annum, payable semi-annually, without relief from valuation or appraisement laws.

That on the 14th day of February, 1852, the said corporation, defendant, by the then corporate name of the New Albany and Salem Railroad Company, executed and delivered to the plaintiff her certain other trust mortgage as set out in the complaint, signed by her president and under her corporate seal, conveying all and singular her road, made and to be made, from New Albany to Michigan City, being of the length of two hundred and eighty-eight miles, or thereabouts, including the right of way and land occupied thereby, together with the superstructure and tracks thereon, and all rails used thereon, bridges, fences, culverts, depot-grounds and buildings thereon, engines, tenders, cars, tools, materials, machinery, and all other then existing or in future to be acquired personal property in any way appertaining to the said line of road, together with the tolls, rents, and income to be had or levied therefrom, and all franchises of the said corporation, to maintain and operate the said railroad, in trust and as security for the payment of a contemplated issue of two thousand bonds of one thousand dollars each, and six hundred and fifty bonds of five hundred dollars each, and all of said bonds bearing interest, payable semi-annually, after the rate of eight per cent. per annum, and without relief from valuation or appraisement laws.

3. That on the 3d of November, 1853, the said railroad company, defendant, by her then name of the New Albany and Salem Railroad Company, executed and delivered to the plaintiff her certain other trust-mortgage, signed by her president and sealed with the seal of the corporation, conveying to him all and singular her line of railroad from New Albany to Michigan City, and all machinery, equipments, and appurtenances as the same is more specifically hereinbefore described, in trust and as security for the payment of a contemplated issue of one thousand bonds of one thousand dollars each, with inter-
506 est, payable semi-annually, after the rate of seven per cent. per annum and without relief from valuation or appraisement laws.

4. That on the 1st day of February, 1855, the said railroad company, by her then name of the New Albany and Salem Railroad Company, executed and delivered to the plaintiff her certain other trust-mortgages, as set out in the complaint, signed by her president and sealed with her

corporate seal, conveying all and singular her road, made and to be made, from New Albany to Michigan City, and all the machinery, equipments, and appurtenances, and future to be acquired property, as the same is more specifically hereinbefore set out, in trust and as security for the payment of a contemplated issue of nine hundred bonds of the sum of one thousand dollars each, and one hundred and sixty bonds of five hundred dollars each, and one hundred bonds of two hundred dollars each, with seven per cent. interest, payable semi-annually, and without relief from valuation or appraisement laws.

5. That on the 13th of January, 1856, the said railroad company, defendant, by her then corporate name of the New Albany and Salem Railroad Company, executed and delivered to the plaintiff her certain other trust-mortgage as set out in the complaint, signed by her president, and sealed with the seal of the corporation, conveying to the plaintiff all and singular the then owned personal property of the said corporation, upon and appurtenant to the line of her said railroad, from New Albany to Michigan City, including engines, cars, tools, machinery, cross-ties not laid in the road, wood, delivered on the line of railroad, and all other personal property of whatever kind provided for or used in connection with said railroad, in trust and as security for a then contemplated issue of bonds to the amount of five hundred thousand dollars, bearing interest payable semi-annually, after the rate of ten per cent. per annum, and without relief from valuation or appraisement laws.

6. And the court further find that the said five several mortgages described in the said complaint were each and every of them duly recorded in the recorder's offices of the proper counties through which said line of railroad runs, and in which the said mortgaged property is situate, within the time required by law.

7. And the court further find that the entire issue of bonds contemplated by the said mortgage of February 8, 1851, to the original amount of five hundred thousand dollars, was negotiated for value and put in circulation by the said railway company, and are still outstanding
507 and unpaid, together with certain interest thereupon, and that the entire issue of bonds contemplated by the said mortgage of February 14, 1852, to the original amount of two million three hundred and twenty-five thousand dollars, was negotiated for value and put in circulation by the said railroad company, and all of said issue, except the amount of fourteen thousand dollars, is now outstanding and unpaid, together with certain interest thereon.

And that the entire issue of bonds contemplated by the said mortgage of November 3d, 1853, to the original amount of one million dollars, was negotiated for value and put in circulation by the said railroad company, and that one hundred and sixteen thousand dollars of the same are outstanding and unpaid, together with certain interest thereon, and that the said railroad company negotiated for value and put in circulation one million of dollars of the issue of bonds contemplated by the said mortgage of February 1st, 1855, and that eighty thousand five hundred of the same are now outstanding and unpaid, together with certain interest thereon, and that the said corporation negotiated for value and put in circulation bonds to the original amount of four hundred and two thousand four hundred and fifty-six dollars and seventy-four cents under the said mortgages of January, 1856, and that eighty thousand one hundred and fifty-three dollars and eighty-seven cents ($80,153.87) of said amount is now outstanding and unpaid, together with certain interest thereupon, and that each and every of said bonds

of the said five issues were payable without relief from valuation or appraisement laws, and that each of the said five mortgages expressly provides that upon a foreclosure or sale of the said property therein included, the same shall be without any relief whatever from valuation or appraisement laws.

8. And the court further finds that on the 24th day of October, 1859, the corporate name of the New Albany and Salem Railroad Company was changed by an order of her board of directors, and according to law, to the Louisville, New Albany and Chicago Railroad Company.

9. The court further finds that there is now due upon the issue of ten per cent. bonds dated February 8, 1851, the sum of nine hundred and fifty-eight thousand five hundred dollars ($958,500) after deducting seven thousand four hundred and seventy-five dollars ($7,475.00) on account of monies paid out by said plaintiff on account of subscription to the Michigan City Harbor Company.

And that there is due upon the issue of eight per cent. bonds of February 14, 1852, the sum of four millions forty-one thousand and
508 five hundred dollars ($4,041,500.00,) after deducting thirty-one thousand two hundred and ninety dollars and eighty-five cents ($31,290.85) on account of monies paid out by said plaintiff on account of subscription to the Michigan City Harbor Company.

And there is now due upon the issue of bonds under the mortgage of November 3, 1853, the sum of two hundred and thirty-six thousand three hundred and forty-seven dollars and sixty-eight cents, ($236,347.68.)

And that there is now due upon the issue of bonds secured by the mortgage of February 1, 1855, the sum of one hundred and seventy-three thousand one hundred and eighty-five dollars and eighty cents, ($173,185.80.)

And that there is now due upon the issue of bonds secured by the mortgage of January 11, 1856, the sum of one hundred and eighty-six thousand eight hundred and seventy-eight dollars and seventy-five cents, ($186,878.75.)

10. And the court further finds that all and singular the property of the said railroad company, included in the five several mortgages, is not sufficient to pay the debt secured thereby, and that the said line of railroad from New Albany to Michigan City is operated as an entirety and as one continuous line of railroad, and that none of the machinery, engines, cars, or equipments of the said line of railroad has ever been specifically set apart as appurtenant to any particular portion of the entire line of railroad, but is used and employed over the entire line of road without any discrimination or distinction. And further find, after hearing proof, that it will be impracticable to separate the said road and its equipments and rolling into parcels, without great inconvenience and damage to all those interested in the said property.

Therefore, for the purpose of closing the said trust embraced in the said five mortgages, and securing the application of all and singular the said mortgaged property to the several claims and liens thereupon, in the order of their several priorities as hereinbefore found in accordance with the conditions of the said several mortgages, and the terms of the several powers of sale contained therein, and this court having by its receiver full possession of all and singular the said mortgaged property, and full power to order the sale thereof for the purpose of paying the liens and claims thereupon, according to the rules and practice of equity, in the exercise of the jurisdiction vested in this
509 court, to declare the conditions of said several mortgages to be

broken, and decree a foreclosure of the same, as well as the further jurisdiction to exercise the powers of sale contained in the said mortgages, and to order generally the sale of property in the custody of the court:

It is finally considered and adjudged by the court, that the said five mortgages be foreclosed, and that all and singular the line of railroad running from New Albany, in the county of Floyd, through the counties of Clarke, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, and La Porte, to Michigan City, and being of the length of two hundred and eighty-eight (288) miles, that is to day; the said railroad as at present constructed and operated, including the right of way and land occupied thereby, together with the superstructure and tracks thereon, bridges, culverts, fences, depot-grounds, and buildings thereon, engines, tenders, cars, tools, materials, machinery, furniture, and all other real and personal property appurtenant to the said line of railroad, and used for the purpose of operating the said line of railroad, together with the tolls, income, and revenues to be levied therefrom, and the franchises to maintain and operate the same, be sold as an entirety, and without any relief from valuation or appraisement laws, and that the process of sale shall be applied as follows:

First. To the payment of the costs and commissions arising from the advertisement and sale of the property.

Second. Of the remainder, one hundred and thirteen two hundred and eighty-eighths (113-288) shall be applied to the payment under the regulations hereinafter set out of the sum of nine hundred and fifty-eight thousand five hundred dollars (958,500) found due upon the ten per cent. bonds issued under the mortgage of February 8th, 1851.

Third. The residue shall be applied toward the payment under the regulations hereinafter set out of the sum of four millions forty-one thousand five hundred dollars ($4,041,500) found due upon the eight per cent. bonds issued under the mortgage of February 14th, 1852.

Fourth. And if any of the purchase-money shall remain thereafter, the same shall be paid over to the clerk of this court to abide further action and distribution herein. And after thirty days herefrom the plaintiff shall be entitled to sue out of this court an order of sale upon this decree, directed to the sheriff of this county, commanding him to sell all and singular the line of railroad aforesaid and its
510 equipments and appurtenances as specifically set out herein, and the franchises to maintain and operate the said road, which order of sale shall embody a copy of this decree; and said sheriff, after advertising the time and place of sale and the specific property to be sold for forty days in two newspapers of general circulation in the city of New Albany, Indiana, and also two newspapers of good and general circulation in the city of New York, in the State of New York, and also one newspaper of general circulation printed and published at Monticello, Indiana, shall proceed to sell to the highest bidder at the court-house door of this county, all and singular the railroad hereinbefore described, and its property, equipment, and appurtenances of every description as an entirety, and the franchises to maintain and operate the same; and upon such sale the equity of redemption of the said railroad company is hereby forever barred and foreclosed, and upon the payment of the money bid upon such and all so made by the sheriff, or the payment and surrender of the ten per cent. and eight per cent. mortgages of said company by the holders thereof, in manner and form as the same is more specifically hereinafter set forth, the said sheriff

shall report such sale and his proceedings herein to this court for approval, as is more specifically set out hereafter; and upon such sale the said sheriff shall, after paying the costs and expenses of sale, including such commissions to himself as may be agreed on between the plaintiff and said sheriff; provided, that the said commissioners shall not exceed an amount which would be allowed by law for such services, out of the residue pay over to each holder of any of the ten per cent. and eight per cent. bonds of the said railroad company, upon his depositing with such sheriff, within thirty days after such sale, his said bond or bonds, and the unpaid interest-warrants attached thereto, the pro rata share which, under the finding and judgment of this court, the holders of said bonds shall be severally entitled to by virtue of the ownership thereof, and thereupon the plaintiff shall endorse upon the said order of sale a receipt to said sheriff, specifying the amount so paid by such sheriff for and on account of the surrendering of all such bond or bonds, and if any balance remain in the hands of the sheriff after paying the pro rata then due upon such surrender, the said sheriff shall pay any and all such monies into the hands of the clerk of this court, taking his receipt therefor, immediately after the expiration of said thirty days from and after the said sale under this decree, said residue of such money to abide in the registry of the court for distribution to the
511 balance of the holders of such ten per cent. and eight per cent. bonds as fail to surrender the same to the sheriff, as provided hereinbefore, and such other of the bond-creditors interested as may establish their title thereto hereafter upon the application of such claimants, and said sheriff shall, on the receipt and surrender up to him of any and all such bonds as he is hereinbefore authorized to receive, write upon and over the face thereof the statement that the same is so surrendered up to him upon such sale, and sign his name thereto, and shall deposit the said bonds so surrendered, as a special deposit, in the First National Bank at Lafayette, Indiana, there to remain subject to the further order of the court; and said sheriff is further required to make a report, under oath, of his doings in the matter of the said sale, and file the same with the clerk of this court as soon as practicable after the expiration of thirty days from and after the said sale, for such approval and action as the court may then direct, and nothing in this decree shall be construed to be a personal judgment against said corporation for any sum or sums whatsoever, so as to authorize any execution whatever to issue in the name of the plaintiff, or any other person, after the sale of the specific property herein directed to be sold for any deficiency that may remain unpaid of the amount of bonds issued under any of the said mortgages described in the complaint; but if, upon such sale, such deficiency shall occur, any bond-creditor shall be entitled to file his petition at the foot of this decree, praying that his right to judgment *over* for all amounts due him, *over* and above the pro-rata share realized by him by virtue of such sale, may be heard and settled by the court, and this action is continued until May 4, 1869. And it is ordered that process issue against the plaintiff as to defendants Wilson, Huff, and Higman, and Markell, and against the Louisville, New Albany and Chicago Railroad as to the defendant John T. Huff. And the said defendants, on motion, are allowed thirty days time to reduce to writing and to file the exceptions by him or them taken during the progress of this cause at this term.

Signed January 23, 1869.

[SEAL.]

JOHN M. LA RUE,
Judge pro tem.

And afterwards, to wit, on the 24th day of February, 1869, a certified copy of the order and decree of court in said cause last-above written was issued to the sheriff of White County, Indiana, with a precept thereto attached, to said sheriff, in the words and figures following, to wit:

512 *Precept to sheriff.*

Therefore you are hereby commanded to proceed to advertise and sell the property described in the above order according to the terms and directions therein contained, and in all things execute the orders of the above decree according to law, and of this writ make due return.

Witness the clerk and seal of said court at office in Monticello, Indiana, this February 24, 1869.

DANIEL D. DALE, *Clerk.*

On the 20th day of January, 1869, the following papers were filed in said cause, which are not included nor inserted in the foregoing record of said cause, to wit:

Objections to L. B. Wilson's application to be made a party.

In White common pleas court, January term, 1869.

DOUW D. WILLIAMSON
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Comp'y and others.

The plaintiff objects to a rule being made upon the application of Lazarus B. Wilson for him to be made a party to this action, because said application does not state facts sufficient to entitle said Lazarus B. Wilson to be made such party.

HARRY CRAWFORD & CHASE & WILSTACH,
Attorneys for Plaintiff.

Objections to application for inspection of mortgages or bonds.

White common pleas, January term, 1869.

DOUW D. WILLIAMSON
v.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al.
Complaint to foreclose mortgages.

The plaintiff objects to the granting of the motion of Huff, Higman, and Wilson for an inspection of the five several mortgages and
513 one of each of the issues of bonds secured thereby for the following reasons:

First. Said Huff, Higman, and Wilson are not yet parties in this suit so as to have a right to demand inspection of said mortgages and bonds.

Secondly. Said mortgages and bonds were not, nor were any of them, executed by said Huff, Higman, and Wilson, or either of them, nor do said mortgages or bonds, or any of them, purport to be so executed.

CRAWFORD & CHASE & WILSTACH,
Attorneys for Plaintiff.

Objection to motion of Huff to file demurrer.

In White common pleas court, January term, 1869.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al.

The plaintiff objects to the granting of the motion and offer of John T. Huff to file a separate demurrer to the complaint for the reasons:

First. That said Huff is not yet a party to this suit so as to have a right to file a demurrer to the complaint; and

Secondly. That said complaint, since the dismissal of this cause as against said John T. Huff, does not seek any relief against him.

CRAWFORD & CHASE & WILSTACH,
Attorneys for Plaintiffs.

Dem. of J. T. Huff.

White common pleas, January term, 1869.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, John T. Huff, & others.

The said defendant, John T. Huff, demurs separately to each paragraph of the complaint herein for the following causes:

514 1. The said several paragraphs do not, nor does either of them, state facts sufficient to constitute a cause of action.

2. There is a defect of parties plaintiff in this to wit, the holders of the bonds secured by the several trust-deeds sued on are not made parties plaintiff, nor are they made defendants.

3. There is a defect of parties defendant in this, to wit, the holders of the bonds secured by the several trust-deeds sued on are not made parties defendant, nor are they made plaintiffs.

W. C. WILSON & HUFF & LANGDON,
Attorneys for Defendant Huff.

And on the 21st day of January, 1869, the following papers were filed in said cause, which are not included or inserted in the foregoing transcript of said cause, to wit:

Affidavit of Jacob Markel on motion to be let in to defend.

STATE OF INDIANA,
White County, ss:

White common pleas, January term, 1869.

DOUW D. WILLIAMSON,
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, et al.
Affidavit of Markel, filed January 21, 1869.

To the Hon. B. F. Schermerhorn, judge of said court:

Your petitioner, Jacob Markel, shows to the court that he is a stock-

holder in the said railroad company; that he holds and owns one hundred and twenty-four shares, of fifty dollars each, of the original capital stock of said company, for which he paid par value, a certificate of which is herewith filed marked "S," and made a part of this petition. Your petitioner shows that for a long time prior to the commencement of the above-entitled suit, the plaintiff, as trustee under the several trust-deeds mentioned in the complaint, or under some of said trust-deeds, had the possession and control of the property and franchises which, it is assumed, are covered by the said trust-deeds, and was in the receipt of the entire income derived therefrom; but how long he so con-
515 trolled said property and received such income your petitioner is not advised with sufficient certainty to state, but your petitioner shows that the said plaintiff had the management of said property under his said trust during the period of the late war of the rebellion, or a part of said period, and that the incomes derived from the use of said property, as your petitioner believes, were greater during that period than during any other like period since the construction of the road; and whether a proper application of said incomes was made by the plaintiff, your petitioner is not informed, but he believes it to be quite material to the interests of the stockholders of said company that the plaintiff, as trustee aforesaid, should be required to render an account of the incomes derived by him from the said property while he was such trustee and in possession, as also of the application made by him of such funds and incomes. Your petitioner has read the affidavits of Isaac N. Higman and William C. Wilson on file in this action, and he says that the matters therein stated by them, so far as they relate to the failure of the said company to make defense in this action, are true, as he believes, and that unless the court will permit such of the stockholders as desire to avail themselves of a defense to this action to take issue upon the matters charged in the complaint as to all such allegations therein contained showing the insolvency of the corporation, its liabilities, and the liens created by its directors upon its property and franchises, your petitioner believes that his interests as a stockholder, and the interests of others in like relation, will be overlooked and disregarded; wherefore your petitioner prays that he may be let in to defend said action in his right as a stockholder, and to join with the said Higman and Wilson in their answer and counter-claim herein.

JACOB MARKEL.

Subscribed and sworn to in open court January 22, 1869.

DANIEL D. DALE, *Clerk.*

Ext. S, referred to in foregoing affidavit.

NEW ALBANY AND SALEM RAILROAD COMPANY.

No. 8250.] [124 Shares.

It is hereby certified that Jacob Markel is the proprietor of one hundred and twenty-four shares in the capital stock of the New Albany and Salem Railroad Company, which stock is transferable only on the books of said company upon the return of this certificate.

516 In testimony whereof the president and secretary of said company have hereunto set their hands at the city of New Albany this 10th day of August, 1855.

W'M W. TUTTLE, *Ass't Secretary.*
JAMES BROOKS, *President.*

Shares fifty dollars each.

Motion to refer report of receiver to special master.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, et al. — White common pleas.

The plaintiff moves the court that the report of the receiver filed herein be referred to the clerk of this court as a special master, to examine and report as to the same at the next term, and that all parties to this action have until the next term to examine said report and file exceptions thereto.

CRAWFORD, CHASE, &c.,
Attorneys for Plaintiffs.

Motion for default, filed January 21, 1869.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others. — White common pleas court.

The plaintiff moves the court for a default against the railroad company, defendant, upon the causes of action and demands of the plaintiff, as set up in the complaint in said action, saving, however, all and singular the rights, equities, liens, priorities, and claims of every kind whatsoever, of the intervening defendants Huff, Wilson, and Higman, and Jacob Markel, as the same may be hereafter settled and found by the court.

CRAWFORD & CHASE & WILSTACH,
Attorneys for Plaintiff.

517 *Petition of C. C. & I. C. R'y W. Co. to save in the distribution of the mortgaged premises.*

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, and others. — Complaint of foreclosure.

In the White common pleas court, January term, 1869.

Comes now the Columbus, Chicago and Indiana Central Railway Company, and respectfully show to the court that on the 28th day of June, 1867, the Toledo, Logansport and Burlington Railway Company, a corporation formed under and pursuant to the laws of the State of Indiana, the Union and Logansport Railroad Company of the State of Indiana, and the Columbus and Indianapolis Central Railway Company of the States of Indiana and Ohio, united their tracks and merged and consolidated their property and capital stock, and thereby formed one company, known as the Columbus and Indiana Central Railway Company.

That on the 4th day of December, 1867, such consolidated company, to wit, The Columbus and Indiana Central Railway Company, and the Chicago and Great Eastern Railway Company, of the State' of Illinois and Indiana, united their tracks, and merged and consolidated their stock and property, thereby formed one corporation, existing in the

States of Ohio, Indiana, and Illinois, known *as* the name of the Columbus, Chicago and Indiana Central Railway Company, your petitioner herein. That by virtue of such consolidations, your petitioner became the owner of all the roads, property, and choses in action of several railway and railroad companies.

That said Toledo, Logansport and Burlington Railway Company, before the said consolidations at the crossing of her road and that of the defendant at Reynolds, White County, Indiana, at the request of the plaintiff herein, the trustee of the several bondholders of the Louisville, New Albany and Chicago Railroad Company, and as such trustee, in the possession of and running of said railroad in the name of the Louisville, New Albany and Chicago Railroad Company, built at Reynolds, aforesaid, a depot for the joint use and benefit of her road and that of
the Louisville, New Albany and Chicago Railroad Company, the
518 costs of which was to be borne equally between said Louisville,
New Albany and Chicago Railroad Company, and the said Toledo, Logansport and Burlington Railroad Company.

Your petitioner shows that the Toledo, Logansport and Burlington Railway Company built said depot, and fully completed the same on the 6th day of October, 1866, and that the cost thereof was $3,500.00, one-half of which the said trustee operating said Louisville, New Albany Railroad Company promised and agreed to pay, to wit, $1,750.00. Your petitioner admits that he paid the sum of $1,100.00; that the balance, $750.00, is due, and together with the interest thereon is due and remains wholly unpaid, and still refuses to pay, or any part thereof; which said balance, with the interest thereon, belongs to your petitioner.

Your petitioner shows that said depot was built for said Louisville, New Albany and Chicago Railroad, at the request of the trustee of her bondholders; wherefore your petitioner says that she is interested in the foreclosure herein, in justice and equity to have her claim paid off first out of the mon*ies* arising out of the earnings of said railroad, as operated by the receiver, or from the sale of said premises as against the stockholders and bondholders of said Louisville, New Albany and Chicago Railroad; wherefore she asks that she may participate in the proceeds of the mortgage' premises, and that she may be allowed to be made a party to these proceedings for that purpose, and for other proper relief.

COLUMBUS, CHICAGO AND INDIANA CENTRAL RAILWAY COMPANY.
B' T. C. ANNABAL, *Attorney.*

STATE OF INDIANA, *White County, ss:*

THURMAN C. ANNABAL, being duly sworn, says that he is the attorney of the Columbus, Chicago and Indiana Central Railway Company, the petitioner above named, and that the facts set forth in the foregoing petition are true in substance and in fact, as he believes.

THURMAN C. ANNABAL.

Subscribed and sworn to before me this 22d day of January, A. D.
DANIEL D. DALE, *Clerk,*
By R. L. HARVEY, *Deputy.*

And afterwards, to wit, on the 18th day of Fe*d*ruary, 1869, John T. Huff, William C. Wilson, administrator, &c., and Isaac N. Hig-
519 man, executor, &c., by counsel, filed in the office of the clerk of

common pleas court of White County, Indiana, their bill of exceptions in the words and figures following, to wit:

Bill of exceptions.

STATE OF INDIANA, *Putnam County, set:*

White common pleas, January term, 1869.

DOUW D. WILLIAMSON,
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, and others.

Be it remembered, that on the 2d judicial day of the above-named term of the said court, John T. Auff, who was, by the original complaint, made a party defendant, and had been summoned as such party, but as to whom the plaintiff had, on the first day of said term, dismissed the case in the above-entitled action, filed in open court his affidavit, with the exhibit therein referred to, which affidavit and exhibit are in these words and figures following, to wit, (which affidavit and exhibit are elsewhere inserted in this transcript;) and thereupon, on motion of the said John T. Huff, it was ordered by the court that he be re-instated as party defendant to the said action. And be it further remembered, that on the said 2d judicial day of the said term, Isaac N. Higman and William C. Wilson filed in open court their respective affidavits, with the exhibit referred to in the said Higman's affidavit, which affidavits and exhibit are in these words and figures following, to wit, (which affidavits and exhibit are elsewhere inserted in this transcript;) whereupon, on motion of the said Isaac N. Higman and William C. Wilson, they were admitted as defendants to said action, the said Higman as the executor of Robert Higman, deceased, and the said Wilson as the administrator of John Wilson, deceased. And thereupon, on the 3d judicial day of the said term, the said John T. Huff, Isaac N. Higman, and William C. Wilson, filed in open court their demurrer to the complaint in said cause, which demurrer is in the words and figures following, to wit, (said demurrer is elsewhere inserted in this transcript;) and thereupon the plaintiff moved the court
520 to reject and strike out said demurrer, which motion was sustained by the court, and said demurrer was stricken out and rejected, as elsewhere in the rec'rd of this cause appears; to which ruling of the court the said John T. Huff, Isaac N. Higman, and William C. Wilson objected and excepted at the time, and in due form of law.

And be it further remembered, that immediately after the said ruling of the court rejecting and striking out said demurrer, the said John T. Huff offered to place on file his separate demurrer to the complaint in said cause, which last-named demurrer was in writing, and was so presented and placed in the hands of the clerk of the said court in open court at the time said last offer was made. But the plaintiff objected to the filing of said separate demurrer, and the court sustained said objection and refused to allow said separate demurrer to be filed; to which ruling of the court the said John T. Huff at the time excepted in due form of law.

And be it further remembered, that on the 3d judicial day of the said term of said court, the said William C. Wilson, after he had been admitted a defendant in said cause, as above shown, filed in open court

his affidavit in writing, in the words and figures following, to wit, (which affidavit is elsewhere inserted in this transcript.—CLERK.) Upon which he moved the court that the appointment of receiver, heretofore made by the court, be vacated, for the reasons set out in the affidavit; whereupon a rule was entered by the court, as appears in the record, upon the plaintiff and James F. Joy, the said receiver, to show cause why said appointment should not be vacated, which rule, by agreement of parties, was made to operate on the 5th judicial day of the said term, on which day the said James F. Joy appeared and filed in open court his affidavit in writing, in the words and figures following, to wit, (which affidavit is elsewhere inserted in this transcript.—CLERK.) And the plaintiff also, at the same, filed the following affidavits of Hiram W. Chase and Henry Crawford, his attorneys in said cause, which last-named affidavit is in the words and figures following, to wit, (which said affidavits are elsewhere inserted in this transcript.—CLERK.) And the said affidavit of William C. Wilson, and the affidavits of the said Joy, and Chase, and Crawford, above set forth, were the only affidavits or proof exhibited to the court on the said motion to vacate the said appointment of receiver; whereupon the court overruled the said motion to vacate said appointment, and refused the said rule; to which ruling the said defendant, William C. Wilson, excepted at time,
521 and in due form of law. And the said John T. Huff, William C. Wilson, administrator, &c., and the said Isaac N. Higman, executor, &c., pray that the foregoing bill of exceptions by them jointly and severally taken in the said cause, be signed, sealed, and made a part of the record of the said cause; which is accordingly done by the court.

[SEAL.]

B. F. SCHERMERHORN,
Judge 15th Judicial District, Indiana.

I believe the foregoing bill of exceptions contain true statements as to the rulings of the court in the case to which Judge LaRue gave the parties the privilege of excepting, but I do not raise any legal objections to the ruling of Judge LaRue authorizing exceptions to Judge Schermerhorn's decisions and rulings.

H. W. CHASE,
Att'y for Plaintiff.

FEBRUARY 12, 1869.

And afterwards, to wit, at a special term of the court of common pleas of White County, Indiana, begun and held at the court-house, in Monticello, in said county, on the 4th day of May, 1869—present, the Hon. John M. LaRue, judge pro tem of said court, said term being held in pursuance of an order of said court made on the 22d day of January, 1869, the following proceedings were had in said cause, to wit:

Order.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

Comes the plaintiff by Crawford & Chase & Wilstach, his attorneys; and come also the defendants, William C. Wilson, Isaac N. Higman, John T. Huff, and Jacob Markel, by Huff & Langdon, their attorneys,

and enter their special appearance herein for the purpose of objecting to the jurisdiction of the court, and objecting that the court has no authority to proceed to the hearing of this cause, or to take any steps therein at the present time; and said defendants now object to the power of the court to act or set in this cause, or make any order
522 therein at the present time, and move that the said cause stand continued until the regular term of this court, which objection and motion the court overruled; and said defendants except.

And thereupon comes Daniel D. Dale, special master appointed to examine and report upon the report of the receiver herein, and files his report as follows, to wit:

Report of master.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, and others. } White common pleas court.

The undersigned, appointed special master to examine into the correctness of the report the receiver filed in this action on January 20, 1869, reports to the court that in pursuance of the order of the court he visited the principal office of the said railroad company, at New Albany, Indiana, where the books and accounts of the receiver are kept, and made a careful and complete examination as to all the business of said road from the time when the receiver took possession up to January 1, 1869; that the books of the receiver are kept in a proper and correct manner; that the report of the receiver heretofore is correct in every particular, and the vouchers for every disbursement are preserved on file in the said office.

DANIEL D. DALE.

Subscribed and sworn to this May 4, 1869.

JOHN M. LA RUE, *Judge.*

And the court now allow the said Dale the sum of seventy-five dollars for his services as such master to be paid by the receiver herein, out of the funds in his hands. And comes also Matthew Henderson, the sheriff of this county, and makes his report of the sale of the railroad and its appurtenances in this behalf as follows, to wit:

Sheriff's report.

DOUW D. WILLIAMSON,
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company. } White common pleas.

The undersigned, sheriff of said White county, reports to the
523 court that on the 24th day of February, 1869, there came to his hands an order of sale sued out of the White common pleas court upon a judgment and decree therein rendered on January 22, 1869, in the above-entitled action, which order of sale embodied a copy of the said decree and commanded the undersigned as such sheriff to make sale of the property therein described according to the directions of the said decree.

In pursuance of the provisions of the said decree and command of said order of sale publication was made for forty days of the time and place of sale, and the specific property to be sold by advertisement in the New York Tribune and the Evening Post, two daily newspapers of good and general circulation, printed and published in the city of New York, New York, and also in the New Albany Daily Commercial and the New Albany Daily Ledger, two daily newspapers of good and general circulation, printed and published in the city of New Albany, Indiana, and also in the Constitutionalist, a newspaper of good and general circulation, printed and published in Monticello, Indiana, and also by posting notices as required by law. (The proper proof of the said several publications is herewith appended,) at the hour of 1 o'clock, p. m. of the 8th day of April, 1869, at the court-house door in Monticello, Indiana, I proceeded to first offer the rents and profits of the said property described in the said writ, and directed to be sold for a term of years not exceeding seven, and receiving no bid therefor, I then and there offered the fee-simple of all the said property, and George F. Talman, Frederick Schuchardt, James H. Banker, Moses Taylor, Edward Minturn, Charles P. Severick, and John Steward bid therefore the sum of one hundred thousand dollars, and that being the highest and best bid for the said property, the same was struck off to the said bidders above named.

And in pursuance of the directions of said decree I duly paid over and accounted to George F. Talman, Frederick Schuchardt, James H. Banker, Moses Taylor, Edward Minturn, Charles P. Leverick and John Stewart, after deducting $650 out of the monies arising from said sale for commissions and costs of advertising, upon their depositing with me, on said 18th of April, five hundred and forty-five of the ten per cent. bonds described in said decree for the sum of one thousand dollars each, together with all the unpaid interest-warrants attached to the same, the pro rata share coming to the said bondholders, which was $34,692.20;

524 and upon the said parties further depositing with me certain of the eight per cent. bonds described in the said decree, to the amount of two million one hundred and twenty-one thousand two hundred dollars, together with the unpaid interest-warrants attached to said bonds, the pro rata share coming to the said bondholders, which was $55,420.00, and the said bonds were each and all surrendered up to me, and were duly endorsed upon the face thereof as required by the said decree, and put upon special deposit in the First National Bank of Lafayette, and the plaintiff has duly endorsed upon the said writ the amounts so paid by me upon the surrender of said bonds to me.

A schedule of the numbers and amounts of the said bonds so surrendered up to me is herewith filed.

The balance of the purchase-money, viz: $9,237.54, was paid to me and deposited by me in the First National Bank at Lafayette.

I have also received from other said purchasers since the day of sale the surrender of the following bonds:

Seven per cent. bonds of 1,000 each, numbered 494,319, 500, 458, 273, 272, 217, and have paid over to them the pro rata share due thereupon, viz: $545.72.

And also, nine eight per cent. bonds of $1,000 each, numbered 1081, 1868, 421, 1966, 1043, 1022, 935, 655, 497, and have paid over to them the pro rata share due thereupon, viz: $235.08.

This leaves in my hands the sum of $8,456.94, which arises from said sale, and the same is now deposited in the First National Bank at Lafayette, Indiana, and I have this day delivered a check for the full amount to the clerk of this court as provided by the said decree; the

bonds surrendered to me as aforesaid are also on deposit in said bank subject to the order of the court.

MATTHEW HENDERSON,
Sheriff of White County, Ind.

Subscribed and sworn to this May 4, 1869.

DANIEL D. DALE, *Clerk.*

525 *Schedule referred to in sheriff's report.*

LOUISVILLE, NEW ALBANY AND CHICAGO RAILROAD.

Total issue of 8 per cent. bonds	2,325
Cancelled	14
	2,311
Total issue of 10 per cent. bonds	500
In the Association, 8 per cents	212½
10 per cents	445
Outstanding 8 per cents	189½
10 per cents	55
Sold for	$100,000 00
Sheriff's fees, costs of sale, &c.	650 00
	$99,250 00

$\frac{113}{288}$ of $99,350 makes each 10 per cent. bond. $77.96.
$\frac{175}{288}$ of $99.350 makes each 8 per cent. bond $26.12 and a fraction.

Paid as follows: 212½ 8 per cent. bonds at $26.12, (with addition of $6.68 for fraction)	$55,420 26
445 10 per cent. bonds at $77.96	34,692 20
	$90,112 46

CASH.

189½ 8 per cent. bonds at $26.12	$4,949 74
55 10 per cent. bonds at $77.96	9,237 54
	$99,350 00
Draft on Farmers' Loan and Trust Co., sheriff's fees, costs, &c.	$650 00
For cash paym't on outstanding bonds	$9,237 54
	9,887 54

"And thereupon, said defendants appearing, move the court for time to examine said reports of said master, Daniel D. Dale, and said Henderson as such sheriff as aforesaid, which is granted, and
526 said defendants appearing, are allowed until the 18th day of May, 1869, in which to file in the office of the clerk of this court objections and exceptions to said reports, or either of them, and all affidavits and papers in support thereof.

And the plaintiff, by Crawford & Chase & Wilstach, his attorneys, files the affidavit of Hiram W. Chase, as follows, to wit:

Affidavit of H. W. Chase.

STATE OF INDIANA,
White County, ss:

In the White common pleas court.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al. } Civil action.

HIRAM W. CHASE, being duly sworn, upon his oath says that he is one of the attorneys of the plaintiff, who is now absent from said State, in the above-entitled cause; that all the property, real and personal, of said corporature defendant is in the possession and custody of James F. Joy, the receiver appointed by this court, and has been in such possession and custody since on or about the 1st day of October, 1868; that on or about the 17th day of April, 1869, the said Joy, as such receiver as aforesaid, had in his possession, in the county of La Porte, in said State, about sixty-six cords of wood, sawed, necessary for use in the engines and cars used in running and operating said railroad under the order of this court; that on or about the day and year last aforesaid one Sheppard Crumpacker, as affiant is informed and believes, caused said sixty-six cords of wood to be levied upon by virtue of some execution in his, said Crumpacker's, favor, by one John Henderson, a constable of said county of La Porte; that said execution was not, as affiant is informed and believes, issued upon a judgment against said Joy, as such receiver, but was issued upon a judgment against said Louisville, New Albany and Chicago Railroad Company; that afterwards, to wit, on the 20th day of April, 1868, said constable sold said wood upon said execution to said Crumpacker, who was then and there notified that said wood was in the possession of said Joy, as such receiver as aforesaid, and that
527 the same was necessary for the use and operation of said railroad under the order of this court; and that immediately said Crumpacker caused said wood to be removed from the possession and custody of said Joy as such receiver as aforesaid, and has converted the same to his own use, and refuses to return the same to the said Joy, although such return has been demanded; which wood was and is of the value of one hundred and twenty-five dollars; all of which is true, as affiant is informed and verily believes, and further says not.

H. W. CHASE.

Subscribed and sworn to before me this 4th day of May, 1869.
DANIEL D. DALE, *Clerk.*
By JOHN S. HURTT, *Deputy.*

And therefore the plaintiff moves the court for a rule against said Sheppard Crumpacker to show cause, if any he can, why he should not be attached for a contempt of this court in removing from the custody and possession of James F. Joy, the receiver in this behalf, the personal property of said corporation defendant, to wit, sixty-six cords of sawed wood, and the court now grants said motion, and orders the Sheppard Crumpacker to show cause, if any he can, on the 25th day of May, 1869, at the court-house in Monticello, White County, Indiana, at 2 o'clock in the afternoon, why he should not be attached for contempt of

this court in removing from the custody and possession of James F. Joy as receiver in this cause, sixty-six cords of wood on or about the 28th day of April, 1869, at the county of La Porte; and the clerk of this court is ordered to issue a certified copy of this order to the sheriff of La Porte County for services upon said Sheppard Crumpacker.

And this cause is continued until May 25, 1869, at 10 o'clock a. m.

Signed May 4, 1869.

JOHN M. LARUE, *Judge.*

And afterwards, to wit, on the 18th day of May, 1869, Jacob Markel, by R. Gregory, his attorney, filed in the office of the clerk of the court of common pleas of White County his objections to the sale of said railroad in these words:

Objection of Markel to sale.

STATE OF INDIANA,
White County, ss:

White common pleas court.

528 DOUW D. WILLIAMSON
vs.
JACOB MARKEL, IMPLEADED WITH THE LOUISville, New Albany and Chicago Railroad Company, et al.

Jacob Markel, one of the defendants in the above-entitled cause, shows to the court that on the 8th day of April, 1869, the sheriff of said county, assuming to act under the authority of a decree of this court entered on the 22d day of January, 1865, as shown by his report, filed with the clerk of said court on the 4th day of May, 1869, exposed to public sale the entire line of railroad of the Louisville, New Albany and Chicago Railroad Company, from New Albany to Michigan City, together with the appurtenances, equipments, and franchises thereto belonging to said line of railroad, being about 288 miles in length, and that one George L. Schuyler, of the city of New York, bid for the property so exposed in behalf of George F. Talman, Frederick Schuchardt, James H. Bauker, Moses Taylor, Edward Minturn, Charles P. Leverick, and John Stewart, the sum of one hundred thousand dollars, and thereupon the said property was struck off by the said sheriff upon said bid, as will appear by reference to the report of said sale, filed by the said sheriff as aforesaid.

The said defendant, by leave of the court, charges that the sale so made is fraudulent and ought to be set aside for the following reasons:

1. The property sold is of the value of at least four millions of dollars, and the sale was for the nominal sum of only one hundred thousand dollars, and was procured by the fraudulent arrangement on the part of the said Schuyler with other persons, by which competition at said sale was suppressed, there being present at the time said sale was made, or on the same day and immediately before said sale, persons competent to bid for said property, who had been drawn hither by the advertisement of the said sale, and were in attendance with the ability to bid and for the purpose of bidding at said sale for said property; that the persons who were thus fraudulently induced not to bid at said sale are Washington DePaw, D. Ricketts, and Richard Bright, but whether they were

induced not to bid by the payment or compensation in money or other advantage, or offer of advantage, held out to them, or either of
527 them, by the said Schuyler or other persons acting in concert with him in respect to said sale, this defendant can only charge upon information and belief; but, upon such information and belief, this defendant charges that the said DePauw, Ricketts, and Bright, or some one of them, did desist from bidding at said sale upon the payment or the promise of compensation in money or property, or under some arrangement between them, or some one or two of them, and said Schuyler, or some person or persons acting in concert with him, and that but for said arrangement the said property would have sold at said sale for at least one million of dollars more than it was sold for.

2. This defendant charges that, although by the terms of the said decree for the sale of said property the sheriff of said county, Matthew Henderson, was charged with the execution of the said decree, and the sale of said property, there was an agreement and an arrangement between the plaintiff, by his attorneys, and the said Matthew Henderson, whereby, in consideration that the sheriff would attend to the duties with which he was so charged for a compensation less than fixed by law, the plaintiff took upon himself the responsibilities of the sale, and as a matter of fact in pursuance of such an arrangement the attorneys of the plaintiff, who are in the veay nature of the case the attorneys of the parties to whom the sale was made, did assume the direction and responsibility of the sale.

3. The price for which said property was sold is grossly inadequate, the same not being equal to the rental-value of the property for five years.

4. The management and conduct of the said sale, though nominally public, were so manifestly prepared in the interests of the class of bondholders in whose names the sale was made as to deter competition in bids upon said property.

5. The said sale was erroneously directed by the court to be the property as an entirety, when it might have sold for a larger sum and to greater advantage in parcels, the said road north of Lafayette, excepting only in the name and the carrying of freights, having no connection with the road south of Lafayette more than with other roads centering at Lafayette. That part of the road north of Lafayette might have been sold separately for at least ten times the amount of said bid, and the part south of Lafayette for a sum greatly in excess of said bid, and although said property was ordered to be sold as an entirety, the order was so made without sufficient deliberation, upon
530 the urgent solicitation of the plaintiff's counsel, and over the objections of the stockholders who were permitted to come in and defend.

Wherefore the defendant, for himself and for and in behalf of all other persons standing in like relation to the subject-matter of the said sale, prays that the said George F. Talman and Frederick Schuchardt, James H. Bauker, Moses Taylor, Edward Minturn, Charles P. Leverick, and John Stewart, with the said sheriff, be made parties to this suit, and be required to answer the matters herein alleged; that upon a hearing the said sale be set aside and the order therefor be so modified as to direct the sale of said property in parcels, and for such other relief in the premises as may be just, equitable, and proper.

This defendant files with the objections to the sale the following interrogatories, which he prays the court to order the defendants, in whose name said property was bid off, each of them separately to answer in order, their respective hoats:

1st. By what arrangement, are you informed by your agent, Geo. L. Schuyler, was competition in bidding at the sale of the Louisville, New Albany and Chicago Railroad and its appurtenances suppressed?

2d. Have you not been informed that your said agent did make some arrangement to silence competition in bidding at sale?

3d. Was not your said agent authorized, after you had constituted him such, or at the same time, or at some other time, to make arrangements to suppress competition in bidding at said sale, in case there should be in attendance any persons likely to become bidders?

4th. Do you not know, or have you not been informed by your agent or otherwise, that Washington DePaw, D. Ricketts, and Richard Bright were in attendance at Monticello on the day of said sale, or that they or some of them were there to bid for said property, and that they or some of them were induced by some arrangement with your agent, or with some other person acting in concert with him or in behalf of the plaintiff, or of some of the holders of bonds of said railroad company, to refrain from competing in bids for said property?

JACOB MARKEL.

Subscribed and sworn to before me, Daniel D. Dale, clerk common pleas court, this 18th day of May, 1869.

DANIEL D. DALE. *Clerk.*

And afterwards, to wit, on the 25th day of May, 1869, the following proceedings were had in said case, to wit:

531 At a special term of the White common pleas court, held May 25, 1869, by adjournment, before Hon. John M. LaRue, for the trial of the case of Douw D. Williamson against the Louisville, New Albany and Chicago Railroad Company and others, the parties were all present in person and by counsel, and the said cause is by agreement adjourned over until the 28th of May, 1869.

Signed May 28, 1869.

JOHN M. LARUE, *Judge.*

And afterwards, to wit, at an adjourned term of said court, held at the court-house in Monticello, Indiana, on the 28th day of May, 1869, present the Hon. John M. LaRue, judge pro tem. of said court, the following proceedings were had in said cause, to wit:

FRIDAY, *May* 28, 1869.

Order.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

Now at this time again comes the Hon. John M. LaRue, the special judge heretofore appointed to try this cause, and come also the plaintiff, by his attorneys, and also Jacob Markel and John T. Huff, by their attorneys, and thereupon the said Markel files his objection to the court having any power to proceed at this time, which reads as follows, viz:

Objections of Markel.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company.

The said Markel by his attorney objects to any action by this court at this time in this cause upon the ground that the Hon. John M. LaRue, who was called to try this cause upon change of venue, had no authority to fix a time for this hearing in vacation, but that the same could only be set down for hearing by the regular judge of the common pleas court of said county, and that therefore there is now no session of this court at which any proceedings can be had.

HUFF & LANGDON,
W. C. WILSON,
For Markel.

532 And said objections are overruled by the court, to which the said Markel at the time excepted, and thereupon the said Markel moves the court for process against the parties named in his pleading, filed herein May 18, 1869, which motion reads as follows, viz:

Motion for process.

DOUW D. WILLIAMSON
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company.

The said Markel moves the court for process against the defendants named in supplemental bill to set aside sale.

HUFF & LANDDON,
W. C. WILSON,
For Markel.

And the court overrule the said motion; to which the said Markel at the time excepted. And thereupon the said Markel moves the court to strike from the files the affidavits of Dillard Ricketts, Washington C. DePaw Richard J. Bright, Hiram W. Chase, Henry Crawford, Madison Sloat, William H. Lewis, Benjamin F. Masten, John H. Masten, filed herein by the plaintiff in support of the sheriff's report of sale herein, which motion of said Markel reads as follows, to wit:

Motion of Markle to strike affidavits from file.

DOUW D. WILLIAMSON,
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

The said Jacob Markel, by his counsel, moves the court to strike from the files of said cause the affidavits of D. Ricketts, R. J. Bright, B. F. and J. H. Masten, H. Crawford, W. H. Lewis, Madison Sloat, W. C. DePaw, H. W. Chase, and shows to the court that the questions presented in said bill, objecting to the confirmation of the sale therein re-

ferred to, is a question of fraud and misconduct in said sale, and that the issue thereon is a proper one to submit to a jury, which said
533 Markel demands, and not an issue to be determined upon ex parte affidavits, taken without notice and no opportunity to cross-examine said affiants.

HUFF & LANGDON & WILSON,
For Markel.

And the court overrule the said motion; to which decision the said Markel at the time excepted. And thereupon the said John T. Huff files an amendment to his petition or cross complaint heretofore filed herein, which said amendment reads as follows:

Amendment to Huff's cross-complaint.

And the said Huff avers that said claim was and is for the right of way and damages incidental thereto for the track of said railroad company, and he hereby offers to vacate the sale of the real estate made to him upon the condition that the court order the receiver of said company to pay his said claim, and he further charges that said claim being for the right of way and damages incident thereto of said company, has a priority of equity over any claim of the mortgage creditors of said road.

HUFF
vs.
WILLIAMSON.

The said Huff asks leave to amend his petition and complaint as above set out.

HUFF & LANGDON & WILSON,
For Huff.

And comes now Lazarus B. Wilson and files an amend*ment* petition praying to be admitted as a defendant in this action, and the plaintiff objects to the filing of said petition, and day is given thereupon. And the said Markel moves to continue the further hearing upon the report of the sheriff as to the sale of the property herein, for answer to certain interrogatories filed by May 18, 1869, upon affidavit, which reads as follows, viz:

Affidavit of Markel and motion for continuance.

STATE OF INDIANA,
White County, ss:

In White common pleas court, May 28, 1869.

534 DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company.

The said Jacob Markel, being duly sworn, upon his oath says that he cannot safely go into trial of this cause as presented in his bill to set

aside the sale in said bill referred to at this time without an answer to the interrogatories filed said complaint by George F. Talman, Frederick Schuchardt, James H. Banker, Moses Taylor, Edward Minturn, Charles P. Leverich, John Steward, and George L. Schuyler. That said affiant expects to elicit facts by the answers thereto material to him on the trial of said cause, and that such facts thus elicited will establish, or greatly tend to establish, the matters charged in said bill, and which facts rest with said parties and their agents, and that he believes such facts to be true, and that he cannot prove the same by any witness that he knows, and that he files the interrogatories not for delay merely, but to obtain substantial justice at the trial; and further saith not.

JACOB MARKEL.

Subscribed and sworn to this 28th day of May, 1869.

DANIEL D. DALE, *Clerk.*

And the court overrule the said motion, and the said Markel at the time excepts, and the said Markel moves the court for a trial by filing of the matters set up in his pleading filed May 18, 1869, which motion is overruled, and the said Markel at the time excepted.

And thereupon on plaintiff's motion the court proceed to hear and determine the report heretofore filed by the sheriff on the 4th day of May, 1869, as to the sale of the property by decree of this court, January 22, 1869, directed to be sold, and also the exceptions filed thereto, and the affidavits filed by both the parties hereto in support of and in response to said exceptions, and the court being sufficiently advised in the said premises, do overrule the exceptions and objections made by the said Markel to the report of the said sheriff, and the court do further in all things approve the said report of the said sheriff so made by him May 4, 1869, and confirm the said sale so made by him as therein set forth, and order and require the said sheriff to make, execute, acknowledge, and deliver to the purchasers of said property as set out in his report, a good and sufficient deed conveying to them all and singular the property described in the said order of sale, and his said report, and thereupon the said sheriff reports to the court a deed of conveyance in obedience to the said order, which said deed of conveyance reads as follows, viz:

535

Deed.

This indenture made and entered into this 28th day of May, 1869, between Matthew Henderson, sheriff of White County, Indiana, as party of the first part, and George F. Talman, Frederick Schuchardt, James H. Banker, Edward Minturn, Moses Taylor, Charles P. Leverick, and John Stewart, as parties of the second part, witnesseth that—

Whereas on the twenty-second day of January, 1869, by the consideration of the common pleas court of White County, Indiana, a decree of foreclosure was duly rendered and entered upon the records of said court, in a certain action therein pending wherein one Douw D. Williamson was plaintiff, and the Louisville, New Albany and Chicago Railroad Company was defendant, by which decree it was adjudged that the said railroad company had, by her original corporate name of the New Albany and Salem Railroad Company, executed and delivered to the said Williamson, as trustee for the purposes and uses therein specifically set forth, five several trust-mortgages conveying and assuring to the said trustee all and singular the property, appurtenances, income, tolls, rights, and

franchises enumerated in the aforesaid conveyances: That under one of said mortgages to said Williamson, executed February 8, 1851, there was due upon the principal and interest of the bonds issued thereunder, and outstanding at the date of the rendition of said decree, the sum of nine hundred and fifty-eight thousand five hundred dollars, which was collectable without relief from valuation laws; that under one of said mortgages to said Williamson, executed February 14, 1852, then due upon the principal and interest of the bonds issued thereunder, and outstanding at the date of the rendition of said decree, the sum of four millions forty-one thousand five hundred dollars; that under one of said mortgages to said Williamson, executed November 3, 1853, there was due upon the principal and interest of the bonds issued thereunder, and outstanding at the date of the rendition of said decree, the sum of two hundred and thirty-six thousand three hundred and forty-seven dollars and sixty-eight cents, which was collectable without relief from valuation laws; that under one of said mortgages to said Williamson, ex-
536 ecuted February 1, 1855, there was due upon the principal and interest of the bonds issued thereunder, and outstanding at the date of the rendition of said decree, the sum of one hundred and seventy-three thousand one hundred and eighty-five dollars and eighty-eight cents, which was collectable without relief from valuation laws; that under one of said mortgages to said Williamson, executed January 11, 1856, there was due upon the principal and interest of the bonds issued thereunder, and outstanding at the date of the said decree, the sum of one hundred and eighty-six thousand eight hundred and seventy-eight dollars and seventy-five cents, which was collectable without relief from valuation laws.

And the said decree further ordered that inasmuch as the conditions of each and all of the five mortgages had been broken, for the purpose of realizing the said several sums adjudged to be due and unpaid under the said mortgages, the entire property embraced in the said five mortgages, to wit, all and singular the line of railroad belonging to the said Louisville, New Albany and Chicago Railroad Company, running from New Albany, in the county of Floyd, northwardly through the counties of Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, and La Porte, to Michigan City, and being of the length of two hundred and eighty-eight miles, as now constructed and operated, including the right of way and lands occupied thereby, together with the superstructure and tracks thereon, bridges, culverts, fences, depot-grounds and buildings thereon, engines, tenders, cars, tools, materials, machinery, furniture, and other real and personal property appurtenant to the said line of railroad, and used for the purpose of operating the same, together with franchise to maintain and operate the same and collect tolls and incomes therefrom, should be sold as an entirety and without any relief from valuation laws. And the said decree further provided that, after thirty days from the said January 22d, 1869, the plaintiff might sue out of the said White common pleas court, and order of sale upon the said decree, directed to the sheriff of said White County, commanding him to sell all and singular the line of railroad aforesaid, and its equipments and appurtenances as embraced in said decree; and

Whereas, on the 24th day of February, 1869, an order of sale was duly sued out upon said decree, sealed with the seal, and tested by the clerk of said court, and directed to the sheriff of White County, commanding
him to sell the property described in said decree as provided
537 therein, which order of sale came to the hands of said sheriff on

the said 24th day of February, 1869, and said sheriff in pursuance of the command of such writ proceeded at the hour of one o'clock, p. m., on the 8th day of April, 1869, at the court-house door in Monticello, White County, Indiana, having advertised the time and place of sale, and the specific property to be sold, for forty days in the New Albany Daily Commercial, and the New Albany Daily Ledger, two newspapers of good and general circulation, printed and published in the city of New Albany, Indiana, and in the New York Tribune and the Evening Post, two newspapers of good and general circulation, printed and published in the city and State of New York, and in the Constitutionalist, a newspaper of general circulation, printed and published at Monticello, Indiana, to sell to the highest bidder all and singular the said line of railroad, equipments, appurtenances and franchises so directed to be sold aforesaid, and having first offered the rents and profits of the said property for a term of years not exceeding seven, and receiving no bid therefor, did offer then and there the fee-simple of all and singular the said mortgaged property and franchises as specifically embraced and described in the said decree and order of sale as an entirety; and said George F. Talman, Frederick Schuchardt, James H. Bouker, Edward Minturn, Moses Taylor, Charles P. Leverick, and John Steward, parties of the second part, bid therefor the sum of one hundred thousand dollars, and that sum being the highest and best bid for the said property, the same was struck off to said parties last above-named for the said sum of one hundred thousand dollars; and

Whereas the said parties of the second part have fully paid the said sum so bid by them as aforesaid, in accordance with the provisions of the said order of sale; and

Whereas the undersigned, such sheriff as aforesaid, in obedience to the command of said writ, duly reported to the said White common pleas court, on the 4th day of May, 1869, the facts of the said sale, and his doings therein, and the court thereupon approved said report, confirmed the said sale so made as aforesaid, and ordered and required the said sheriff to make, execute, acknowledge, and deliver to the said purchasers a good and sufficient deed conveying to them all and singular the property described in the said order of sale, and forever barring and foreclosing the equity of redemption of the said Louisville, New Albany and Chicago Railroad Company in and to the premises so sold as aforesaid, or any part thereof, which said order of confirmation and
538 direction for the said sheriff to execute and deliver said conveyance, is dated May 28, 1869, and is spread at large upon record, in order-book No. 8, of the White common pleas court, pages 279 to 288, and is made part of this indenture by reference thereto.

Now, therefore, in consideration of the premises and the payment by the said parties of the second part of the said sum of one hundred thousand dollars so bid by them as aforesaid, and in obedience to the order of the court made as above on the 28th day of May, 1859, the said Matthew Henderson, sheriff of White County, Indiana, party of the first part, does by these presents sell, convey, and confirm unto the said George F. Talman, Frederick Schuchardt, James H. Bauker, Edward Minturn, Moses Taylor, Charles P. Leverick, and John Steward, all and singular the property, appurtenances, rights, and franchises hereinbefore described, viz, the entire line of railroad heretofore owned and operated by the Louisville, New Albany and Chicago Railroad Company, running from New Albany, in the county of Floyd, northwardly through the counties of Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, and La Porte,

to Michigan City, and being of the length of 288 miles, or thereabouts, as now constructed and operated, including the right of way, and land occupied thereby, together with the superstructure and tracks thereon, bridges, culverts, fences, depot grounds, and buildings thereon, engines, tenders, cars, tools, materials, machinery, furniture, and all other real and personal property appurtenant to the said line of railroad, and used for the purpose of operating the same, together with the franchise to maintain and operate the same, and collect tolls and income therefrom.

To have and hold the same in fee-simple, to themselves and their heirs and assigns forever, free and clear from all and every equity of redemption of the said Louisville, New Albany and Chicago Railroad Company in and to the premises hereby conveyed, and each and every part thereof, and the said premises and franchises to be had, held, and enjoyed in every respect as completely as the same have been had, held, and enjoyed by the said Louisville, New Albany and Chicago Railroad Company, under the original charter thereof, and all the amendments thereto.

In witness whereof the said party of the first part has hereinto set his hand and seal the day and year first above written.

MATTHEW HENDERSON,
Sheriff White County, Indiana.

539 STATE OF INDIANA,
White County, ss:

Before me, Daniel D. Dale, clerk of the said White common pleas court, personally appeared the above-named Matthew Henderson, and acknowledged the execution of the foregoing conveyance.

Witness my hand and the seal of said court this 28th day of May, 1869.

[SEAL.] DANIEL D. DALE, *Clerk.*

[$100 revenue stamp.]

And the said deed being inspected by the court and found to be correct, and executed, acknowledged, and stamped as required by law, the court thereupon approves the said deed, and affixed the approval thereupon in these words and figures:

Approval of the court.

This deed examined and approved by the court, May 28, 1869.

JOHN M. LARUE, *Judge.*

And the court further order that the said deed be delivered by the sheriff to the said grantees therein named, and that the receiver in whose possession and custody the said property embraced in said deed now is, do upon the request of the said purchasers, or their duly authorized agent, deliver up the possession and control of all and singular the property embraced in said deed.

Nothing in this decree, however, to operate as a bar to the said Markel, or any other party proceeding by way of original action to annul the sale herein made as they may be advised.

And the receiver files his current report herein, which is in the words and figures following, viz:

Receipts and disbursements of cash made by James F. Joy, receiver of the Louisville, New Albany and Chicago Railroad Company, from January 1, 1869, to April 30, 1869, inclusive:

540	Balance from last account		51,999 04
	RECEIPTS.		
	From freight	96,142 61	
	From passengers	109,618 35	
	From mails	12,729 36	
	From express	7,964 39	
	From telegraph	628 76	
	From engine and car hire	695 50	
			227,778 97
	Total receipts		279,778 01
	DISBURSEMENTS.		
	For office and station service	34,900 25	
	For flag-switch and watchmen	1,109 43	
	For train service	12,161 78	
	For locomotion service	13,800 48	
	For fuel	25,621 70	
	For preparing fuel	3,159 20	
	For oil waste and tallow	3,082 45	
	For repairs of engines	13,674 90	
	For repairs of cars	16,265 98	
	For repairs of buildings	1,973 98	
	For repairs of bridges	6,567 04	
	For repairs of roadway	54,494 04	
	For new iron	11,895 86	
	For ties	10,792 60	
	For operation of telegraph	3,291 72	
	For stationery and advertising	1,323 45	
	For legal expenses	1,798 33	
	For injuries to animals	1,198 99	
	For damages on freight	527 82	
	For earnings refunded	613 03	
	For taxes, rent, and insurance	4,797 23	
	For machine-shop expenses	1,783 38	
		214,853 64	279,778 01
	For United States tax	2,759 58	
	For discount and exchange	65 40	
	For ordinary expenses	217,678 62	
	For Bloomington depot	269 05	
541	For switch and car key account	10 00	
	For liabilities of trustees	1,522 36	
	For account of judgment of Kent, Crawford and Kent	31,052 51	
	Total disbursements		250,532 54
			$29,245 47

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, and others.

In the White common pleas court.

James F. Joy, the receiver heretofore appointed in this action, herewith presents to the court an account of his receipts and disbursements from January 1, 1869, to April 30, 1869, showing a balance in his hand of $29,245 47.

JAMES F. JOY,
Receiver of L., N. A. & C. R. R. Co.

STATE OF MICHIGAN, *Wayne County, ss:*

Personally appeared before me, a notary public in and for said State and county, the above-named James F. Joy, and made oath to the truth of the above report.

Witness my hand and official seal this 27th day of May, 1869.

LEAN STEVENS,
Notary Public, Wayne County, Michigan.

And said current report, and also the report heretofore made by him are laid over for final confirmation, and time is given said Markel until the 15th of July, 1869, to file his bill of exceptions herein; and it is further ordered that Matthew Henderson be, and is hereby, allowed the further sum of two hundred and fifty dollars over and above what he has heretofore received as commissions upon the said sale, and for the execution of the deed reported; and said sum is ordered to be
542 taxed at costs and paid by the receiver out of the funds in his hands; to all which findings and orders of the court the said Markel at the time excepted.

And it appearing to the court, by the return of the sheriff of La Porte County, that Sheppard Crumpacker was duly served on May 10, 1869, with the rule against him to show cause why an attachment should not be issued against him for contempt of this court in disturbing the possession of the receiver herein, and the said Crumpacker wholly failing to appear and show any cause whatever, and it appearing to the court by affidavit that the said Crumpacker has been guilty of a contempt of this court, it is ordered that a writ of attachment be forthwith issued to the sheriff of La Porte County, bailable in the sum of $500, against the person of Sheppard Crumpacker, for contempt of this court, said attachment to be returnable at the next sitting of this court, September 30, 1869.

And comes also James F. Joy, the receiver heretofore appointed in this action, and it appearing from affidavit filed herein that the said Crumpacker is in possession of certain wood wrongfully and illegally taken from the custody of the said receiver, it is ordered that a writ of assistance issue forthwith to the sheriff of La Porte, Indiana, commanding him to forthwith take from the possession of the said Sheppard Crumpacker sixty-four cords of wood mentioned in the affidavit of Hiram W. Chase filed herein, and deliver the same to James F. Joy, the receiver herein, or his duly-constituted agent therefor, the said wood being in the town of Westville, La Porte County, Indiana, and being the same as that taken by the said Sheppard Crumpacker from the possession of the receiver herein; and it is ordered that a copy of this order,

duly certified by the clerk of this court, and under the seal thereof, do issue as such writ of assistance to the said sheriff of La Porte County, Indiana, which said copy shall be authority and command to the sheriff to execute the order hereby made, and the said sheriff shall forthwith execute the same and make return of his doings in the premises upon the said order, and return the same with his costs to the clerk of this court.

Ordered that this cause stand continued until Thur'day, September 30, 1869.

Signed May 28, 1869.

JOHN LARUE, *Judge.*

And on the same day, to wit, the 28th day of May, 1869, the following affidavits were filed in support of said sale in said cause, to wit:

543 *Affidavit of M. Sloat.*

STATE OF INDIANA, *Tippecanoe County, ss:*

MADISON SLOAT, on his oath, says that he is now, and for nearly two years has been, general superintendent of the Louisville, New Albany and Chicago Railroad Company.

That the said line of railroad from New Albany to Michigan City has been and now is operated as one continuous line, and no part of the rolling-stock has ever been set apart or used exclusively upon any given part of the road, but the entire machinery and stock of said road are and have been used indiscriminately over the whole line as necessity or convenience required. The earnings of the line have never been apportioned.

The earnings of the entire line have been entirely inadequate for the past two years to pay the necessary expenses of operating the same and keep the said road and equipments in proper repairs. The road is now needing large repairs and renewals both in permanent way and equipments, but the receipts of the line are not enough to furnish such repairs and renowals, and the expense of operating the road in such a state is much greater than it would be if the same was in complete repair.

The said railroad company is hopelessly insolvent, and the bond creditors of said conpany have no opportunity to realize anything upon their claims, except what arises from a sale of the line from New Albany to Michigan City, and its equipment; that all of said property is not sufficient to pay one-third of the principal and interest of the bonded debt, and is not worth, and will not, if sold, in any manner to exceed $1,500,000, as this affiant verily believes.

The rolling-stock of said road is of various kinds and values, and in different state of repair, and it would be almost impossible to apportion in a fair and equitable manner the stock of the whole road to different parcels.

This affiant believes that the said road will bring more if sold as an entirety than in any other manner, and that it cannot be divided into parcels and sold without great injury to the bondholders and to the separate pieces of road and to the public.

To separate the road from Lafayette to Michigan City from the other part and sell it by itself, would render the remaining portion of
544 the road almost valueless as an investment, and in the opinion of

this affiant the same could not earn enough to make it self supporting, and the line south of Lafayette would fall into disuse.

MADISON SLOAT.

Subscribed and sworn to before me, the undersigned, a notary public of said county, this 31st day of March, 1869.

[SEAL.] H. W. CHASE,
Notary Public.

Affidavit of H. Crawford.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

White common pleas court.

HENRY CRAWFORD, upon his oath, states that he is one of the counsel for the plaintiff in the above-entitled action, and that he was present at Monticello, Indiana, on the 8th day of April, 1869, when the sheriff of White County, Indiana, sold the Louisville, New Albany and Chicago Railroad under the decree heretofore rendered in this action; that he is well acquainted with Washington C. DePaw, Dillard Ricketts, and Richard J. Bright, who were present at sale, and is also well acquainted with George L. Schuyler, the person who as agent bid off the said railroad; that he was present during all the interviews had at any time between said Schuyler and said DePaw, Ricketts, and Bright during said day; that this affiant introduced said Schuyler to said DePaw and Bright, he not being previously acquainted with them; that this affiant has read over the allegations contained in the first paragraph of the affidavit filed herein by Jacob Markel, on the 18th of May, 1869, as to some agreement or understanding between said Schuyler and said DePaw, Ricketts, and Bright, or some one or more of them, as to their not bidding on said road, and as to the payment of money or promise to pay money or property, or to give some advantage in consideration of not bidding, and that all such allegations and each and every one of them are and is utterly false, and without the least foundation in fact; that in truth the said Schuyler was, during said interview, urging the said parties to bid upon the said road, instead of trying
545 to deter or prevent them. The allegations contained in the second specification of said affidavit, that there was any agreement between the sheriff and the plaintiff, by which the latter took upon himself the responsibility and direction of the sale, are also untrue. The only agreement between the sheriff and the plaintiff was as to compensation to be paid in lieu of the ordinary percentage, and that the attorneys of the plaintiff would, without expense to him, prepare for him his report, notices, and deed, but there was no release of said sheriff from any legal responsibility whatever. And it is untrue that the attorneys for the plaintiff did in fact assume the direction and responsibility of said sale.

2. The management and conduct of said sale was not prepared to deter but to invite bidding, and it was in all respects open, regular, fair, in presence of a large concourse of people, and conducted in exact and literal accordance with law and the order of this court, as set forth in its decree of January 22, and was not prepared in the interests of any person or class of persons.

3. The property was bid in by the bondholders holding more than nine-tenths of the issue of first-mortgage bonds, and the property is utterly insufficient to pay more than one-fourth, probably, of the debt due thereon, and there is no other property besides the road so sold and the income in the hands of the receiver, out of which any part of the residue of the mortgage-debt and interest can be paid, so that whether the road brought only $100,000 at the sale, or would bring even as much as $2,000,000, would be of no importance except to the bondholders, who in either event would have a large balance unpaid and uncollectable.

HENRY CRAWFORD.

Sworn and subscribed before me this 28th day of May, 1869.

DANIEL D. DALE, *Clerk*,
By R. L. HARVEY, *Deputy*.

Affidavit of R. J. Bright in support of sale.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

White common pleas court.

Richard J. Bright, upon his oath, says that he, together with
546 Washington C. DePaw and Dillard Ricketts, was present at the sale of the Louisville, New Albany and Chicago Railroad, at Monticello, on the 8th day of April, 1869; that he has seen and read the affidavit of Jacob Markel, filed herein May 18, 1869, and that all and each of the charges and allegations therein contained, as to any agreement between George L. Schuyler and this affiant and said DePaw or Ricketts, or either of them, not to bid on said road, and the payment or promise of payment of money or property by the said Schuyler, or any one in his behalf to said parties, or any one of them, are utterly false and without any foundation whatever in fact.

R. J. BRIGHT.

STATE OF INDIANA, *Marion County, ss:*

Sworn and subscribed to before a notary public in and for said county this twenty-fo'rth day of May, A. D. 1869.

[L. S.] W'M C. MORIATY, *Notary Public.*

Affidavit of W. C. DePauw in support of sale.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al.

White common pleas court.

WASHINGTON C. DEPAUW upon his oath says that he, together with Richard J. Bright and Dillard Ricketts, was present at the sale of the Louisville, New Albany and Chicago Railroad at Monticello, on the 8th

of April, 1869; that he has seen and read the affidavit of Jacob Markel filed herein May 18, 1869 and that all and each of the charges and allegations therein contained as to any agreement between George L. Schuyler and this affiant and said Bright or Ricketts, or either of them not to bid on said road, and the payment or promise of payment of money or property by the said Schuyler, or any one in his behalf, to said parties, or any one of them, are utterly false and without any foundation whatever in fact.

W. C. DEPAUW.

547 STATE OF INDIANA, *Floyd County, ss:*

Sworn and subscribed to before me, a notary public in and for said county, this twenty-seventh day of May, A. D. 1869.

[L. S.] ISAAC S. WINSTANDLEY,
Notary Public.

Affidavit of W. H. Lewis in support of sale.

STATE OF INDIANA, *Floyd County, ss:*

WILLIAM H. LEWIS, upon his oath, says. that he is now and for the past ten years has been cashier of the Louisville, New Albany and Chicago Railroad Company, and has had during the said time the entire charge of the receipts and disbursements of the said line of railroad from New Albany to Michigan City; that no part of said road has ever been operated separately from the other; that no part of the rolling-stock of the road has ever been apportioned to or run exclusively upon any particular portion of the line, but has been used and run indiscriminately over the whole line; that no part of the earnings arising from a given portion of the line has been kept separate and apart from the whole line, but that the whole line of railway has been and now is operated as an entirety, and that such manner of operation is, in the judgment of this affiant, the best, most profitable, and only feasible method of operating the said line of railway.

During the said ten years the said railway has been able to pay only two years' interest upon its bonded securities, which amount in principal to $2,825,000; and that eight years' interest now remains unpaid and due upon the said loan capital, which eight years' interest the said railroad company has been and is entirely unable to pay from the operation of her line; that for the past two or three years the entire gross receipts of said entire line of railroad have been insufficient to discharge the ordinary expenses of operating the said road and keeping it in proper repair; that a very large amount of money is now required to put new iron and ties in the roadway, and for repair of rolling-stock, which the said company are unable to procure. The said railroad
548 company is hopelessly insolvent, and the bond-creditors of said company have no means of realizing anything upon their claims over and above what the line of railroad from New Albany to Michigan City and its appurtenances and rolling-stock may sell for; and all of said property is utterly insufficient to pay the said mortgage-debt and interest, which now amounts to about $6,000,000, or even one-third thereof; that the said property is not worth to exceed the sum of $1,500,000; and, whether sold in one parcel as an entirety, or divided into different parts and sold separately, it will not bring that sum on a judicial sale.

This affiant further states that he believes it to be utterly impractica-

ble to so apportion the rolling-stock as to be able to fairly divide said road into parcels; that the road will bring more if sold as an entirety, and that if the northern end of the road from Lafayette to Michigan City should be sold separately, the south part would be valueless comparatively, and would not leave enough to pay the expenses of operating the same.

W. H. LEWIS.

Subscribed and sworn to before me, a notary public in and for said county and State, this 31st day of March, 1869.

[L. S.] WM. J. HISAY, *Notary Public.*

Affidavit of B. F. Masten.

THE STATE OF INDIANA, *Vigo County, ss:*

BENJAMIN F. MASTEN, of said county, being duly sworn, on his oath says that immediately preceding the first day of January, 1868, for several years he was the general superintendent of the Louisville, New Albany and Chicago Railroad, and in the employ of the Louisville, New Albany and Chicago Railroad Company; that he is familiar with the financial condition of said company, and that said company is and for several years has been hopelessly insolvent and unable to pay even by a sale of the entire railroad and the appurtenances thereof, with all the rolling-stock and machinery thereto belonging, as deponent believes, one-half of her bonded debt; that in deponent's opinion it would be greatly injurious to the interests of the parties in interest to sell said road in parcels; that it has always been operated as an entire line, and the machinery and rolling-stock has always been used as belonging to the whole road, and it is impracticable to sell it in parcels or ap-
549 portion it to different parts of the road; that in deponent's opinion to sever the road at Lafayette and sell the part between that point and Michigan City would render the part south of Lafayette of comparatively little value; that in deponent's opinion the way to make the road pay anything over expenses for running and repairs, is to use the north end in connection with that part south of Lafayette, and encourage the transportation of coal, iron ore, iron, and lumber between Greencastle and Michigan City in addition to the other traffic of the line, and also to develop the trade and traffic between Louisville and New Albany and Chicago over the entire line of the road. If the road should be severed into parcels, no one will have any trade or business beyond what is merely local, while all the through business will be under the control of competing lines.

Deponent further states that he does not believe the entire railroad with all its appurtenances is worth to exceed the sum of one million seven hundred thousand dollars.

BENJAMIN F. MASTEN.

Subscribed and sworn to before me this 2d day of April, 1869.

[L. S.] ISAAC M. COMPTON.
Notary Public.

Affidavit of John Masten.

THE STATE OF INDIANA, *Clay County, ss:*

JOHN MASTEN, being duly sworn, on his oath says that he was, for several years immediately prior to the first day of July last, in the employ of Louisville, New Albany and Chicago Railroad Company as

at New Albany, and was and is familiar with the financial condition of the company; that the same is largely insolvent, and unable to pay but a small portion of her bonded debt, and deponent believes that the interests of parties concerned in the road require that the same shall be sold as an entirety and not in parcels.

JOHN H. MASTEN.

Subscribed and sworn to before me this 2d day of April, 1869.
[L. S.] ISAAC M. COMPTON,
Notary Public.

550 *Affidavit of D. Ricketts.*

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

In the White common pleas court.

STATE OF INDIANA, *Marion County, ss:*

DILLARD RICKETTS, upon his oath, says that he, together with Washington C. DePauw and Richard J. Bright, was present at Monticello, on April 8, at the sale of the Louisville, New Albany and Chicago Railroad Company; that he has seen and read the affidavit of Jacob Markel, filed May 18, 1869, and that all and each of the charges and allegations therein contained as to any agreement between George L. Schuyler and this affiant and said DePauw and Bright, or either of them, not to bid on said road, and the payment, or promise of payment of money or property by the said Schuyler, or any one in his behalf, to any of them, are utterly false, and without any foundation whatever in fact.

D. RICKETTS.

STATE OF INDIANA, *Marion County, ss:*

Personally appeared before me, the undersigned, a notary public in and for Marion County, Dillard Ricketts, who, being duly sworn, says that the facts set forth in the foregoing affidavits are true.

Subscribed and sworn to May 24, 1869.
[L. S.] W. KETCHUM,
Notary Public.

Affidavit of H. W. Chase.

THE STATE OF INDIANA, *White County, ss:*

In the common pleas court, before Hon. John M. LaRue, judge.

551 DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al.

HIRAM W. CHASE, being duly sworn, says that he is one of the attorneys of the plaintiff in the above-entitled cause; that he has read over the objections to sale of railroad filed by Jacob Markel in this

cause on the 18th day of May, 1869; that he is and has been for the last sixteen years familiar with the railroad of said company, extending from New Albany to Michigan City; that it has always been run and operated as an entire line of railroad, and no division has ever been made in regard to its earnings or its rolling-stock, except so far as may have been necessary to run in connection with other roads to accommodate business, and to keep accounts so as to settle with such connecting roads; that the income of the entire line has gone into a common fund; that deponent believes it is impracticable to divide said railroad, and sell the same in parcels, but that said road ought to be used, and was properly sold, as an entirety.

Deponent further says that he was present at the sale of said railroad and its appurtenances on the 8th day of April, 1869, at Monticello, Indiana, by Sheriff Matthew Henderson; that he saw said George L. Schuyler, Washington DePauw, Richard Bright, and D. Ricketts, who were also present at said sale, and was in conversation with them just before the sale took place, and saw them when it did take place; that there was not, so far as deponent knows or believes, any bargain or understanding whatever that said DePauw, Ricketts, and Bright, or any of them, should not bid, nor was there, to deponent's knowledge or belief, any inducement held out, either fraudulent or otherwise, for said persons not to bid on the road by said Schuyler, or any other person, but deponent understood from said Schuyler and said Ricketts at the time that said Schuyler was anxious and urged that said Ricketts, DePauw, and Bright, or some one or more of them, should bid for said railroad and its appurtenances the sum of two millions of dollars, but they all declined making any such bid, and therefore the property was put up and a bid was made therefor by said Schuyler on behalf of certain persons, to wit, Frederick Schuchardt, James H. Bauker, Moses Taylor, Edward Minturn, Charles P. Leverick, and John Stewart, to the amount of one hundred thousand dollars, and no person bidding
552 more, after due deliberation, the property was struck off and sold to them. Deponent further says that the said sale was, so far as deponent knows or believes, in all respects fair and legal.

Deponent further says that there was no arrangement or agreement, to the knowledge or belief of the deponent, between the plaintiff and his attorneys, and the said Matthew Henderson, whereby, in consideration that the sheriff would attend to his duties for a compensation less than fixed by law, the plaintiff took upon himself the responsibility of said sale. And, further, the deponent says that said plaintiff's attorneys did not assume the direction and responsibility of said sale.

Deponent further says that the said purchasers of said railroad represented over nine-tenths of all the first and second mortgage bonds of said company, and the property was bid off on their behalf.

Deponent further says that the said Jacob Markel was present at sheriff's sale, and made no objection thereto, or to the fairness thereof.

H. W. CHASE.

Subscribed and sworn to before me this 28th day of May, 1869.

DANIEL D. DALE, *Clerk*,
By R. L. HARVEY, *Deputy*.

On the 4th day of May, 1869, the following proofs of publication were filed in said court, to wit:

Affidavit of Joseph Tanner.

STATE OF INDIANA, *Floyd County, ss:*

I, JOSEPH TURNER, being duly sworn according to law, on oath state that the annexed advertisement of sheriff's sale was duly inserted in the New Albany Daily Commercial from the 24th day of February to the 8th day of April, 1869.

JOSEPH TANNER,
Business Manager of Commercial.

Subscribed and sworn to before me this 12th day of April, 1869.
[L. S.] GEORGE P. HUCKEBY,
Notary Public.

553 *Notice referred to in affidavit of Tanner.*

SHERIFF'S SALE.

By virtue of a writ to me directed, sued out of the common pleas court of White County, Indiana, upon a decree therein rendered January 22, 1869, in favor of Douw D. Williamson, and against the Louisville, New Albany and Chicago Railroad Company, I will proceed to sell at public outcry to the highest bidder, at the court-house door at Monticello, White County, Indiana, at one o'clock p. m., on the 8th day of April, 1869, the entire line of said Louisville, New Albany and Chicago Railroad from New Albany to Michigan City, with all and singular its property, equipments, appurtenances, and franchises, as more specifically described in said decree, said railroad being of the length of 288 miles, or thereabouts. Said railroad and all its appurtenances and franchises as aforesaid will be sold as an entirety, and without any relief from valuation laws.

M. HENDERSON,
Sheriff of White County, Indiana.

Affidavit of L. G. Matthews.

OFFICE OF THE
NEW ALBANY DAILY AND WEEKLY LEDGER.

LUCIEN G. MATTHEWS, being duly sworn, says that he is one of the publishers of the New Albany Daily Ledger, a newspaper of general circulation, printed and published in Floyd County, Indiana, and that the annexed advertisement in the case of Williamson vs. L., N. A. & C. R. R., was published in said newspaper daily from the 24th day of February, 1869, to the 8th day of April, 1869, inclusive, and further says not.

LUCIEN G. MATTHEWS.

STATE OF INDIANA, *Floyd County, ss:*

Subscribed and sworn to before me this 27th day of April, 1869.
[L. S.] A. DOWLING,
Notary Public.

Printer's fees, $20.00; paid by Henry Crawford, esq.

Notice referred to in affidavit of L. G. Matthews.

554 NOTICE OF SALE.—SHERIFF'S SALE.

By virtue of a writ to me directed, sued out of the common pleas court of White County, Indiana, upon a decree therein rendered January 22, 1869, in favor of Douw D. Williamson, and against the Louisville, New Albany and Chicago Railroad Company, I will proceed to sell at public outcry to the highest bidder, at the court-house door, at Monticello, White County, Indiana, at 1 o'clock p. m., on the 8th day of April, 1869, the entire line of said Louisville, New Albany and Chicago Railroad from New Albany to Michigan City, with all and singular its property, equipments, appurtenances, and franchises, as more specifically described in said decree, said railroad being of the length of two hundred and eighty-eight miles, or thereabouts. Said railroad with all its appurtenances and franchises, as aforesaid, will be sold as an entirety, and without any relief from valuation laws.

M. HENDERSON,
Sheriff of White County, Indiana.

Affidavit of H. Dithmar.

STATE OF NEW YORK,
City and County of New York, ss:

HENRY DITHMAR, of the city of New York, being duly sworn, says that he is foreman in the office of the Evening Post, a daily paper of good and general circulation, printed and published in the city of New York, and that the notice of which the annexed is a printed copy has been legally published in the Evening Post daily in each week for thirty-seven times successively, commencing on the 24th day of February, 1869.

HENRY DITHMAR.

Sworn before me this 8th day of April, 1860.
[L. S.] JOHN BUTCHER,
Notary Public, City and County of New York.

Notice referred to in above affidavit.

NOTICE OR SALE.—SHERIFF'S SALE.

555 By virtue of a writ to me directed, sued out of the common pleas court of White County, Indiana, upon a decree therein rendered January 22, 1869, in favor of Douw D. Williamson, and against the Louisville, New Albany and Chicago Railroad Company, I will proceed to sell at public outcry to the highest bidder, at the court-house door, at Monticello, White County, Indiana, at 1 o'clock p. m., on the 8th day of April, 1869, the entire line of said Louisville, New Albany and Chicago Railroad from New Albany to Michigan City, with all and singular its property, equipments, appurtenances, and franchises, as more specifically described in said decree, said railroad being of the length of 288 miles, or thereabouts.

Said railroad and its appurtenances and franchises as aforesaid will be sold as an entirety, and without any relief from valuation laws.

February 24, 1869.

M. HENDERSON,
Sheriff of White County, Indiana.

Affidavit of T. N. Rooker.

STATE OF NEW YORK,
City and County of New York, ss:

THOMAS N. ROOKER, being duly sworn, saith that he is foreman in the office of the New York Daily Tribune, a newspaper printed in the city of New York, of good and general circulation; that the advertisement hereto annexed has been regularly published in the said New York Daily Tribune thirty-eight days successively, commencing on the twenty-fourth day of February, 1869.

THOMAS N. ROOKER.

Sworn to before me this 14th day of April, 1869.

W'M BAKER,
[L. S.] *Notary Public, New York County.*

Notice referred to in foregoing affidavit.

NOTICE OF SALE.—SHERIFF'S SALE.

By virtue of a writ to me directed, sued out of the common pleas court of White County, Indiana, upon a decree therein rendered January 22, 1869, in favor of Douw D. Williamson, and against the Louisville, New Albany and Chicago Railroad Company, I will proceed to sell at public outcry to the highest bidder, at the door of the court-house, at Monticello, White County, Indiana, at one o'clock p. m., on the 8th day of April, 1869, the entire line of said Louisville, New Albany and Chicago Railroad from New Albany to Michigan City, with all and singular its property, equipments, appurtenances, and franchises, as more specifically described in said decree, said railroad being of the length of 288 miles, or thereabouts.

556

Said railroad and all its appurtenances and franchises as aforesaid will be sold as an entirety, and without any relief from valuation laws.

M. HENDERSON,
Sheriff White County, Indiana.

Affidavit of McEwen.

STATE OF INDIANA,
White County, ss:

Personally appeared before the undersigned, JAMES W. MCEWEN, publisher of the Constitutionalist, a public weekly newspaper of general circulation, printed and published in Monticello, in the county aforesaid, who, being duly sworn, upon his oath saith that the notice of which the attached is a true copy was duly published in said paper for six weeks successively, the first of which publications was on the 25th day of February, 1869, and the last on the 1st day of April, 1869.

JAMES W. MCEWEN.

Subscribed and sworn to before me this 4th day of May, 1869.

DANIEL D. DALE, *Clerk*,
By R. L. HARVEY, *Deputy.*

Notice referred to in the above affidavit.

NOTICE OF SALE.—SHERIFF'S SALE.

By virtue of an order of sale to me directed, sued out of the common pleas court of White County, Indiana, upon a decree therein rendered on January 22d, 1869, in a certain action therein pending, wherein Douw D. Williamson was plaintiff, and the Louisville, New Albany and Chicago Railroad Company and others were defendants, I will proceed at one (1) o'clock p. m., after the 8th day of April, 1869, at
557 the court-house door, at Monticello, Indiana, to offer and sell at public outcry, to the highest bidder, the entire line of railroad of said Louisville, New Albany and Chicago Railroad Company, from New Albany to Michigan City, together with the appurtenances, equipments, and franchises thereto pertaining, as the same are more specifically described in the said decree, said line of railroad being about 288 miles in length. The said railroad, appurtenances, equipments, and franchises will be sold as an entirety, and without any relief from valuation or appraisement laws.

M. HENDERSON,
Sheriff White County.

And afterwards, to wit, on the 7th day of July, 1869, the defendants, Isaac N. Higman, executor, William C. Wilson, administrator, Jacob Markel, John T. Huff, and Lazarus B. Wilson, by counsel, filed in the office of the clerk of the court aforesaid their exceptions to the report of the receiver and master heretofore filed herein, which exceptions are in these words:

Exceptions to report of receiver and master.

STATE OF INDIANA,
White County, ss:

White common pleas court, before Judge LaRue, July 7, 1869.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

The defendants in the above-entitled cause, Isaac N. Higman, executor, William C. Wilson, administrator, Jacob Markel, John T. Huff, and Lazarus B. Wilson, file the following exceptions to the report of the receiver, filed January 20, 1869, and the report of the master thereon, filed May 4, 1869.

The said defendants except to so much of said receiver's report as claims credit for the sum of $10,000 paid on account of judgment in favor of Kent, Crawford and Kent, and to the said report of the said master in so far as it approves the said credit; because the claim on which said payment was made has no sufficient foundation to authorize the application thus made of funds in the hands of said re-
558 ceiver, and the said payment was made without the authority and direction of the court for that purpose had.

And the said defendants except and object to the report of the said receiver filed herein, on the 4th day of May, 1869, in so far as the said

receiver therein claims credit for the sum of $31,052.51 on account of judgment of Kent, Crawford and Kent, because the receiver had no authority to thus apply the funds in his hands as such receiver, the said judgment of Kent, Crawford and Kent not being a claim to which such application should be made of said funds, and there being no order or direction of the court to authorize such application.

Wherefore the said defendants pray that the matters set forth in the foregoing exceptions may be inquired into by the court, and upon such inquiry that the credits so claimed be disallowed, so that said receiver shall be held to pay over, as this court may direct, to be applied under its order, the sum of $46,052.51, the amount so wrongfully claimed as credits in said several reports.

W. C. WILSON & HUFF & LANGDON,
Attorneys for the said Defendants.

And afterwards, to wit, on the 11th day of July, 1869, there was filed in the office of the clerk of the court aforesaid the writ of attachment issued by order of the court against Sheppard Crumpacker, with the return of the sheriff of La Porte County, Indiana, thereon endorsed, which return was in these words:

Sheriff's return to writ of attachment.

By virtue of the within writ of attachment I did arrest the within-named Sheppard Crumpacker, on the 7th day of June, 1869, and I further return that he was taken from me by virtue of a writ of habeas corpus issued by Judge A. L. Osborne, of the La Porte circuit court, and by him released from my custody on the 15th day of June, 1869.

J. D. PHELPS,
Sheriff La Porte County.
By W'M H. H. WHITEHEAD, *Dep't.*

Serving, $0.50; mileage, 2.40; postage, .10; return, 10—$3.10.

559 And on the same day, to wit, July 11, 1869, the writ of assistance heretofore issued to the sheriff of La Porte County, Indiana, against Sheppard Crumpacker was filed in the office of the clerk of the court aforesaid, with the return of the sheriff of La Porte County, Indiana, endorsed thereon in these words:

Served as commanded, and the wood delivered to plaintiff's agent as per receipt on this writ, which is made a part of my return.

J. D. PHELPS, *Sheriff L. C.*,
By W'M H. H. WHITEHEAD, *Dep't.*

Serving, $1.00; mileage, 2.40; return, .10—$3.50.

Receipt referred to in above return.

Receipt for wood.

JUNE 12, 1869.

Received of W. H. H. Whitehead, deputy sheriff La Porte County, the wood mentioned in this writ.

J. F. JOY,
By F. SULLIVAN.

And afterwards, to wit, on the 4th day of October, 1869, an agreement was filed in the office of the clerk of the court aforesaid, which is in these words:

Agreement to continue.

THE STATE OF INDIANA,
White County, ss:

In the common pleas court, before Hon. John M. LaRue, judge.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

It is ordered, by the consent of parties, that this cause stand continued to Wednesday, December 1, 1869, at one o'clock p. m., and that upon the suggestion of the death of the plaintiff, now made to
160 me, that the attorneys heretofore appearing for the plaintiff have leave to file a petition or application of Charles E. Bill to be made plaintiff instead of said Williamson, and that thereupon this suit shall stand revived in the name of said Bill as plaintiff.

Dated September 30, 1869.

JOHN M. LARUE, *Judge.*

And afterwards, to wit, at a special term of the court of common pleas of White County, Indiana, begun and held at the court-house in the town of Monticello, in said county, on the first day of December, 1869—present, the Hon. John M. LaRue, judge pro tempore of said court, said term being held in pursuance of an order of said court—the following proceedings were had in said cause, to wit:

Order.

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company.

Come now the parties, and the death of the original plaintiff being suggested, on motion of the original attorneys of the plaintiff and on filing copy of a power of attorney, the name of Charles E. Bill is substituted herein, and the suit ordered to stand revived in his name, and thereupon comes John T. Huff, one of the defendants herein, by Huff & Langdon, his attorneys, and asks leave to file a supplemental petition herein praying that the receiver be ordered to pay out certain monies in his hands in these words:

Petition of J. T. Huff.

STATE OF INDIANA, *White County, ss:*

White common pleas court, Dec. 1, 1869, before Judge LaRue.

IN THE MATTER OF DOUW D. WILLIAMSON, trustee,
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, John T. Huff & others.

561 To the honorable the judge of said court:

Your petitioner, John T. Huff, who is one of the defendants in the above-entitled cause, represents to the court that, since his answer and cross-bill were filed therein, he has received a deed from the sheriff of Tippecanoe County for lots 156 and 157, in Cabots and Huntington's addition to Lafayette, in Tippecanoe County, in said State, pursuant to the sale made by said sheriff as set forth in said answer, and your petitioner is informed that the present holders of said railroad are claiming that the said lots, with the improvements thereon, are necessary to the running of the road, and form a part of the main structure of said railroad. Now, your petitioner offers, upon payment of the judgment upon which sale was made, as though such sale had not occurred, to relinquish said sale, and suffer a decree to be entered, vacating the same, and the deed made in pursuance thereof. Your petitioner shows that said judgment was recovered on account of the right of way over the lands described in the record of said judgment and damages incident thereto, as will be seen by said record, a copy of which is filed herewith, marked Exhibit O. And your petitioner prays the court for an order on the receiver directing him to pay said judgment out of any monies in his hands yet to be accounted for, and for such other relief as may be proper.

S. A. HUFF,
Attorney for Petitioner.

STATE OF INDIANA, *Tippecanoe County, ss:*

Samuel A. Huff, the attorney and agent for the above-named petitioner, John T. Huff, on oath says, he is the agent of the said petitioner, who is absent from the State; that the facts set forth in said petition are true, and within the knowledge of the affiant.

SAMUEL A. HUFF.

Subscribed and sworn to before me this 1st day of December, 1869.
Witness my hand and notarial seal the same date.
[L. S.] B. W. LANGDON, *Notary Public.*

(Copy of petition of attorney referred to in the foregoing order, filed December 1, 1869.—*Clerk.*)

562 *Petition of attorney.*

DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company.

White common pleas court.

The said Douw D. Williamson having departed this life since the

last adjournment of said court, I, Charles E. Bill, of the city, county, and State of New York, the successor of said Williamson in the trust created by the mortgages in the above action mentioned, hereby authorize Henry Crawford and Chase and Wilstach to revive and continue the above-entitled cause now pending and undetermined in the common pleas court of White County, Indiana, in my name as such trustee, and as my true and lawful attorney to take all legal and necessary steps to conclude said action and discharge the duties devolving upon me as such trustee.

Witness my hand and seal September 20, 1869.

(Signed) CHARLES E. BILL. [SEAL.]

STATE OF NEW YORK,
County of New York, ss:

Before me, a notary public of said county and State, personally appeared the above-named Charles E. Bill, and acknowledged the due execution of the foregoing letter of attorney.

Witness my hand and official seal September 20, 1869.

(Signed) S. B. REYNOLDS,
Notary Public, New York City and County.

Ex. "O," filed with petition of J. T. Huff.

Pleas held before the honorable Charles H. Test, sole judge of the twelfth judicial circuit, in and for the county of Tippecanoe and the State of Indiana, of which circuit said Tippecanoe County forms a part, and at the October term of said Tippecanoe circuit court, in the year of our Lord one thousand eight hundred and fifty-seven, to wit:

563 JOHN T. HUFF, GENEVIEVE HUFF, Samuel D. Huff, Ionia Huff, and Esadonia Huff, the last three by Timothy Dame, their next friend,
vs.
THE NEW ALBANY AND SALEM RAILROAD Company.
} Civil action.

Be it remembered, that on the fifth day of September, in the year of our Lord one thousand eight hundred and fifty-six, said plaintiffs, by Samuel A. Huff and Behm & Dame, their attorneys, filed in the office of the clerk of the Tippecanoe circuit court, in the State of Indiana, their certain complaint against said defendants, as follows, to wit:

STATE OF INDIANA, *Tippecanoe County, ss:*

Tippecanoe circuit court, October term, 1856.

JOHN T. HUFF, GENEVIEVE HUFF, SAMUEL D. Huff, Ionia Huff, and Esadonia Huff, the last three being infants, sue by their next friend, Timothy Dame,
vs.
THE NEW ALBANY AND SALEM RAILROAD Company.

John T. Huff, Genevieve Huff, Samuel D. Huff, Ionia Huff, and Esa-

donia Huff, the last-named three being infants, who sue by their next friend, Timothy Dame, plaintiffs in this suit, complain of the New Albany and Salem Railroad Company, defendants, and say that the plaintiffs on the first day of August, 1853, were, and they still are, the owners in fee-simple of the following-described real estate, situate in said county, to wit: The northeast fractional quarter of section four, in township twenty-three north, of range four west. That the railroad of said defendants is constructed upon a part of said lands, the center-line of said railroad entering said land on the north line ther'of, 294 feet west from the southeast corner thereof; thence running in a northeasterly direction until said center-line strikes the east line of said real estate 1,055 feet north from the northeast corner of said real estate; that the road through said land is constructed on an embankment thrown up by said company, varying from five to twenty feet in height; that the earth from this embankment is taken from the land of the plaintiffs alongside of the embankment by deep excava-
564 tions on either side thereof; that these excavations and the ground actually occupied as the road-bed embrace five acres of said tract of land, and these excavations are so left, some of them being twenty feet in depth, so that large pools of water collect therein; and there being no drains constructed therefrom by said defendant, the pools aforesaid remain stagnant on the land of the said plaintiffs; that said stagnant pools are greatly detrimental to the health of persons occupying said lands, by consequence deteriorate the value of the adjoining portions of said land; that a portion of said real estate, containing about three acres in the southeast corner thereof, is rendered wholly worthless to them, being cut off from the residue of said tract by the embankment of said defendants' road, so as to be inaccessible from other parts of said land, and wholly inaccessible from any public highway; and, also, that the plaintiffs did, at the date aforesaid, own, and they still own, an established ferry on and appurtenant to said land, across the Wabash River; that, prior to the construction of said defendants' road, and the bridge across said river, had been a great yearly profit to the plaintiffs; but now the plaintiffs charge that the defendants' bridge is placed across the said river on stone abutments and piers at a point not exceeding 344 feet above the point at which said ferry is established, occupying a part of the landing allotted by law to said ferry, which had been used as such prior to the construction of said bridge; that by reason of the appropriation of the banks of said river at so near a point to said established ferry, and on a part of the shore used and occupied as a landing in pursuance of the right secured by law to such established ferry, the said ferry has been greatly lessened in value, and rendered almost profitless to the plaintiffs.

They also charge that the piers and abutments of said bridge form great hinderances to the use of said ferry, being placed in said river at a point so near said ferry as to prevent the passage of boats from one shore to the other without great risk and danger, and by consequence destroying a very large amount of the business of said ferry, that before the erection of said bridge had been of profit to the plaintiffs, and that still would be but for the injury aforesaid, and that the erection and maintenance of said bridge by the defendants at the point aforesaid otherwise greatly damages the plaintiffs in their use of the aforesaid established ferry; wherefore, on account of injuries aforesaid, the plaintiffs say they are damaged to the amount of ten thousand dollars; and the plaintiffs show to the court that heretofore, to wit, on the 24th

565 day of August, 1854, they drew up a statement of the facts above set forth, in the form of a complaint, in writing, addressed to the president and directors of the New Albany and Salem Railroad Company, regularly signed by counsel, a copy of which is herewith filed, marked A, and made a part of this paragraph, in the words and figures following, to wit:

"STATE OF INDIANA, *Tippecanoe County, ss:*

"To the president and directors of the New Albany and Salem Railroad Company:

"John T. Huff, Genevieve Huff, Samuel D. Huff, Ionia Huff, and Esadonia Huff, the last-named four being infants, of whom Timothy Dame is guardian, and by whom they sue, show that they are the owners in fee-simple of the northeast fractional quarter of section number four, in township twenty-three north, of range four west, in the following undivided proportions: The said John T. Huff is the owner of the undivided seven-fortieths thereof, and each of the others the undivided thirty-three one-hundred-and-sixtieths thereof. That the railroad of said company is constructed on a part of said land, the center-line of said road entering said land on the south line thereof 294 feet west from the southeast corner thereof; thence running in a northeasterly direction until said center-line strikes the east line of said tract of land 1,055 feet north from the southeast corner of said tract; that the road through said land is constructed on an embankment thrown up by said company, varying from five to twenty feet in height; that the earth from this embankment is taken from the land of these complainants along the side of the embankment, by deep excavations on each side thereof; that the excavations and the ground actually occupied as the road-bed embraces about five acres of said tract of land, and these excavations are so left that, being some of them twenty feet in depth, that large pools of water collect therein, and there being no drains constructed therefrom by said company, the pools aforesaid become stagnant on the land of said claimants; that said stagnant pools are detrimental to the health of persons occupying said lands, and by consequence greatly deteriorate the value of the adjoining portions of said land. Claimants further show that a portion of said land, containing about three acres, in the
566 southeast corner thereof, is rendered wholly worthless to them, being cut off from the residue of said tract by the embankment of said company's road, so as to be inaccessible from the other part of said land, and wholly inaccessible from any public highway.

"Claimants further show that they have an established ferry on and appurtenant to said lands, across the Wabash River; that said ferry had, prior to the construction of said railroad and the railroad bridge of said company across the Wabash River, been a great yearly profit to said claimants. But now the claimants charge that the bridge of said company is placed across said river on stone abutments and piers at a point not exceeding 344 feet above the point at which said ferry is established, occupying a part of the landing allotted by law to said ferry, which had been used as such prior to the construction of said bridge; that by reason of the appropriation of the banks of the river at so near a point to said established ferry and on a part of the shore used and occupied as a landing, in pursuance of the right secured by law to said established ferry, the said ferry has been greatly lessened in value, and rendered almost profitless to said claimants. They also charge that the piers and

abutments of said bridge form great hinderances to the use of said ferry, being placed in said river at a point so near said ferry as to prevent the passage of boats from one shore to the other without great risk and danger, by consequence destroying a very large amount of the business of said ferry that before the erection of said bridge had been of profit to said claimants, and that still would be but for the injury complained of herein, and that the erection and maintenance of said bridge by said company at the point aforesaid otherwise greatly damages the said claimants in their use of the aforesaid established ferry. Wherefore on account of the injuries above set forth and shown, the said claimants say they are damaged to the amount of ten thousand dollars, which damage the claimants ask may be assessed and paid.

"TIMOTHY DAME AND
"GODLOVE O. BEHM,
"*Attorneys for John T. Huff, and*
"GENEVIEVE HUFF,
"SAMUEL D. HUFF,
"IONIA HUFF, AND
"ESADONIA HUFF,
"By TIMOTHY DAME, *their Guardian.*"

And the plaintiffs charge that said complaint in writing, duly signed by counsel, was enclosed to said company, whose principal office of business was kept at New Albany, in said State. That it was received by said company on the day of , 1854, and within two years after said defendant entered upon said land as aforesaid, and that the defendant wholly failed and refused to appoint appraisers to assess
567 the damages of the plaintiffs, and has ever since failed and refused so to do, and said defendant has not paid said damages nor any part thereof, but to do so wholly refuse.

PARAGRAPH SECOND.—And the plaintiffs further say that on the first day of August, 1853, the defendant in constructing of her said railroad, entered upon the land of the plaintiffs, in the first paragraph of this complaint described, and constructed her said road by throwing up a high embankment over said land of the plaintiffs, and building a railroad bridge over the Wabash River, abutting said bridge on the land of the plaintiffs; and the plaintiffs charge that the defendant in the construction of her said railroad bridge did not, as the law required, avoid all unnecessary damage to the plaintiffs, but, on the contrary, did commit avoidable and unnecessary damage to the plaintiffs in this: the land of the plaintiffs aforesaid, over which the embankment is constructed was, before the construction of said embankment, and ever since has been, accustomed to overflow in times of extreme freshets in the streams adjacent thereto, draining themselves before said road was built of the flood-waters, through channels which had been naturally formed, and which before that time had been sufficient for their complete drainage, and the defendant in building her said embankment, threw the same across said channels without affording any vent whatever for the flood-waters, using the earth and soil of the plaintiffs for raising said embankment, and excavating at irregular intervals deep holes and pits on said land, without making any way for the flood-waters in said holes and pits to escape, so that the same, by reason of the reckless manner in which said defendant constructed said embankment and excavated said holes and pits, are left standing and stagnant upon the land aforesaid until they are carried away by the process of evaporation, wholly destroying the use of a large portion of said land and endangering the health of those occupy-

ing other portions thereof, where the defendant might have avoided such damage, and might have constructed her embankment with sluices to correspond with said natural channels, so as to pass the flood-waters through the same as they have been accustomed to flow, and might well have procured the earth and soil for said embankment from the land of the plaintiffs adjoining said railroad by regular excavations on either side thereof, and in such manner as that said excavations would have passed the said flood-waters from the land of the plaintiff as the freshets flow back into the channels of said streams. And the plaint-
568 iffs aver at the time the defendants entered upon said land, constructed her road, and built her bridge as aforesaid, there was an established ferry across the Wabash River, on and appurtenant to said land, of which they were the owners, and that said established ferry has ever since continued to, and still does exist appurtenant to said land, and that the defendant in the location and erection of her said railroad bridge over said river committed avoidable and unnecessary damage to the plaintiffs by abutting her said bridge on the said land of the plaintiffs at a point on the bank of the said river less than fifty rods above the point at which the common public road leading to said ferry approaches said river, and unnecessarily appropriating a part of said shore within the limits prescribed by law for the use of said ferry, and by building the stone piers on which her said bridge rests, and the abutment thereof on the opposite shore within the said limits, and the plaintiffs aver that the use of said ferry was and has continued to be almost totally destroyed by the defendant by the construction of her said bridge as aforesaid, depriving them of the use of their landings on both sides of the said river, and occupying the space which before the building of said bridge had been used and occupied by them in the use of their said ferry privilege, and also by the contiguity of the piers aforesaid to the accustomed track of said ferry within the bounds aforesaid, the currents of the said river have become changed so as to throw up sand bars along the bed of the river immediately below said piers, and to wash out deep channels at the intervals between and below said piers, whereby the navigation across said river with ferry craft is now and from the time said bridge was constructed has continued to be difficult and dangerous, so as to destroy the profits of said ferry, whereas the defendant might well have built her bridge at another point without the bounds of said established ferry so as to have avoided said damage, and the plaintiffs aver that they had, before the construction of said bridge by the defendants, enjoyed great profits from said ferry, which they might still enjoy but for the unnecessary damage and injury aforesaid, and that they are damaged by reason of said injury to said ferry in the sum of ten thousand dollars, and by reason of the appropriation of the lands aforesaid and the construction of said embankment and the excavations aforesaid, in the manner above shown, in the further sum of five thousand dollars. And the plaintiffs say that by reason of the matters in both paragraphs of this complaint specified, they have been damaged in the sum of twenty thousand dollars, for which
569 they claim judgment, and they pray the court to grant them relief in the premises generally.

SAMUEL A. HUFF & BEHM & DAME,
For Plaintiffs.

And thereupon a summons issued as follows, to-wit:

Summons.

STATE OF INDIANA, *Tippecanoe County, ss:*

State of Indiana to the sheriff of Tippecanoe County, in said State, greeting:

You are hereby commanded to summon the New Albany and Salem Railroad Company, if she may be found in your county, to personally be and appear before the judge of the Tippecanoe circuit court on the first day of the next term, to be holden at the court-house, in the city of Lafayette, in said county, on the first Monday in October next, to answer the charge of John T. Huff, Genevieve Huff, Samuel D. Huff, Ionia Huff and Esadonia Huff, the last three by Timothy Dame, their next friend, filed in said court against her—amount claimed twenty thousand dollars—and have you then and there this writ.

Witness Otho K. Weakly, clerk of our said court, and the seal thereof affixed at office in Lafayette, on this fifth day of September, A. D. 1856.

[L. S.]

O. K. WEAKLY, *Clerk.*
FRED. W. COLE, *Dept.*

And afterwards, to wit, on the day of , 1856, said summons was returned with the sheriff's endorsement thereon as follows:

Served this writ on the New Albany and Salem Railroad Company by leaving a copy of this writ with William Foster, the agent of said company, September 16, 1856.

THOMAS J. CHIZUM, *Sheriff.*
WILLIAM H. MORGAN, *Deputy.*

April term, 1857.

570 And afterwards, to wit, at a term of the Tippecanoe circuit court, in the State of Indiana, began and held at the court-house in the city of Lafayette, in said county, on Monday, the sixth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, it being the first Monday in said month, before the honorable Andrew Ingram, sole judge of said court, and on Tuesday, the second judicial day of said term, it being the seventh day of April, A. D. 1857, come the plaintiffs, and, on motion, the defendant is ruled to answer on or before the tenth judicial day of the present term, and day is given. And afterwards, to wit, at the term aforesaid of the court aforesaid, began and held as aforesaid, before the honorable John Pettit, judge of said court, and on the sixty-second judicial day of said term, it being Tuesday, July 25, 1857, come the plaintiffs by Huff, Baird and LaRue and Behm, their attorneys, and file the following complaint, the original complaint herein being last, to wit:

STATE OF INDIANA, *Tippecanoe County, ss:*

In Tippecanoe circuit court, to April term, 1857.

JOHN T. HUFF, GENEVIEVE HUFF, SAMUEL D. Huff, Ionia Huff, and Esadonia Huff,
vs.
THE LOUISVILLE, NEW ALBANY AND SALEM Railroad Company.

Substituted complaint.

Said plaintiffs complain of said defendant, and say that they are the owners in fee-simple of the east fractional quarter of section number four, in township twenty-three north, of range four west, in the following undivided proportions:

The said John T. Huff is the owner of the undivided seven-fortieths thereof, and each of the other plaintiffs is the owner of the undivided thirty three one-hundred-and-sixtieths thereof. That the railroad of said company is constructed on a part of said land, the center-line of said road entering said land on the south line thereof feet west from the southeast corner thereof, thence running in a northeasterly direction until said center-line strikes the east line of said tract of land north from the southeast corner thereof feet. That the road through said
571 land is constructed on an embankment thrown up by said company, varying from ten to twenty-five feet in height; that the earth from said embankment is taken from the land of these plaintiffs along the side of said embankment, by deep excavations on either side thereof; that these excavations and the ground actually occupied as the road-bed embraces about acres of said tract of land, and these excavations are so left, being some of them twenty feet in depth, that large pools of water collect therein, and there being no drains constructed thereupon by said company, the pools aforesaid remain stagnant on the land of said claimants; that said stagnant pools are detrimental to the health of persons occupying said land, and by consequence greatly deteriorate the value of the adjoining portions of said land.

containing about acres in the southeast corner thereof is rendered wholly worthless to them, being cut off from the mainbody of said tract by the embankment aforesaid, so a to be entirely inaccessible from the other part of said land, and wholly inaccessible from any public highway. Said plaintiffs further show that they own an established ferry on and appurtenant to said land across the Wabash River; that said ferry had, prior to the construction of said railroad and the railroad bridge across the Wabash River, been of great yearly profit to said plaintiffs, but now the plaintiffs aver that the bridge of said company is placed across said river on stone abutments at a point not exceeding feet above the point at which the ferry is established, occupying a part of the landing allotted by law to said ferry, which had been used as such prior to the construction of said bridge; that by reason of the appropriation of the banks of the river at so near a point to said established ferry, and on a part of the shore used and occupied as a landing, in pursuance of the right secured by law to such established ferry, the said ferry has been greatly decreased in value and rendered almost profitless to the plaintiffs. The plaintiffs also charge that the piers and abutments of said bridge form great hindrance to the use of said ferry, being placed in said river at a point so near to said ferry as to prevent the passage of boats from one shore to the other without great risk and damage to persons and property, and by consequence destroying a very large amount of the business of said ferry, that before the erection of said bridge has been of profit to the plaintiffs, and that still would be but for the injury complained of herein, and that the erection and maintenance of said bridge by said company at the point aforesaid otherwise greatly damages claimants in their use of the aforesaid established ferry, as aforesaid.

572 And the plaintiffs aver that the said company constructed and

located her said bridge across said river at said ferry, and within the limits allowed by law for the use thereof on either side of said river, unnecessarily and to the great injury of the said established ferry, when said company could have located and constructed said bridge for the general purpose of her said railroad at some other point on said river, and so far distant from the point at which said ferry is by law established, as to not interfere in any manner with the ferry of the said plaintiffs; and the plaintiffs aver that the said railroad company, by the location and construction of her bridge at the point aforesaid, has done and committed unnecessary damage to the plaintiffs' established ferry aforesaid, and the plaintiffs aver that heretofore, to wit, on the 24th day of August, 1854, and within two days after said company entered upon and appropriated said land, they filed their complaint in writing with the secretary of the board of directors of said railroad company specifying the injury and damage done by the said company in the construction of her said road on and across the said lands, and at the said ferry appurtenant thereto, and requested the appointment of three appraisers to value and assess the damage sustained by the plaintiffs as aforesaid, a copy of which said complaint is filed herewith, marked Exhibit A, and made a part of this complaint, and the plaintiffs aver that the matters and things charged in said complaint, so filed as aforesaid, are true, but that said board of directors failed and neglected and refused to appoint appraisers to assess said damage as the law required. Therefore, the plaintiffs hereinbefore named sue, and in consideration of the premises, they claim damages to the sum of twenty thousand dollars, for which they demand judgment.

SAMUEL A. HUFF.
GODLOVE O. BEHM.

And this cause is continued to the next term of this court.

October term, 1857.

And afterwards, to wit, at a term of the Tippecanoe circuit court, in the State of Indiana, began and held at the court-house, in the city of Lafayette, in said county, on Monday, the twelfth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, it being the second Monday in said month, before the honorable John Pettit, sole judge of said court, and on Monday, the seventh judicial day of said term, it being the nineteenth day of October, A. D. 1857, come the parties by their attorneys, and on motion and by agreement
573 the court order that this cause be submitted to a jury of three, composed of George Rose and Andrew J. Morley, and another to be selected by them, and the sheriff is directed to have such jury in court to-morrow morning, and day is given.

Term aforesaid.

And afterwards, to wit, at the term aforesaid, of the court aforesaid, began and held as aforesaid, before the honorable judge aforesaid, and on Wednesday, the ninth judicial day of said term, it being the twenty-first day of October, 1857, come the parties by their attorneys, and the jurors in this cause, heretofore selected, report that they have made choice of John Broadie as a juror to act as such with them in the trial of this cause, and the court order that summons issue for said John Broadie to appear in this court to-morrow morning, and day is given.

And afterwards, to wit, at the term aforesaid, of the court aforesaid, began and held as aforesaid, before the honorable judge as aforesaid, and on Thursday, the tenth judicial day of said term, it being the twenty-second day of October, A. D. 1857, come the parties by their attorneys, and Judge Wood being present presiding in this cause, the said defendant files the following answer and agreement herein, to wit:

Answer of defendant.

JOHN T. HUFF ET AL.
vs.
THE NEW ALBANY AND SALEM RAILROAD Company. } Civil action.

The defendant for answer to the complaint denies each and every of the allegations contained therein.

CHASE & WILSTACH,
Attorneys for Def't.

And by agreement this cause is set for trial before Charles H. Test on the fourteenth judicial day of the present term, and day is given.

And afterwards, to wit, at the *time* aforesaid, of the court aforesaid, before the honorable Charles H. Test, judge, and on Tuesday, the fourteenth judicial day of said term, it being the twenty-seventh day of October, A. D. 1857, come said plaintiffs by their attorneys, and
574 the defendant also comes by Chase & Wilstach, her attorneys, and Charles H. Test being present, presiding in this cause by agreement, and the plaintiffs' attorneys suggest to the court that the said Genevieve Huff has arrived at the age of twenty-one years since the commencement of this suit, and the issue being joined, comes the jury as by agreement, to wit, George S. Rose, Andrew J. Morley, and John Broadie, good and lawful men, householders of said county, who are now duly sworn to well and truly try the issue joined in this behalf, and a true verdict to give according to law and evidence, and after hearing the statement of the cause, said jury, on motion by consent of parties, are ordered to visit and examine the premises in this behalf under the charge of the sheriff; and that James B. Flack and John Levering, engineers, accompanying said jury and point out to them the survey heretofore made by them on such premises, and that such jury after such examination separate until to-morrow morning, and day is given.

CHARLES H. TEST.

Signed October 28, 1857.

And afterwards, to wit, at the time aforesaid of the court aforesaid, before the judge aforesaid, and on Wednesday, the fifteenth judicial day of said term, it being the twenty-eighth day of October, A. D. 1857, come the parties, by their attorneys, and also come the jury in this behalf empannelled and sworn, and after hearing a part of the evidence, have leave to separate under the charge of the court until to-morrow morning at nine o'clock, and day is given.

And afterwards, to wit, at the term aforesaid of the court aforesaid, before the judge aforesaid, and on Thursday, the sixteenth judicial day of said term, it being the twenty-ninth day of October, A. D. 1857,

come the parties, by their attorneys, and the jury in this behalf empannelled and sworn also comes, and, after hearing a part of the evidence, have leave by agreement of parties to separate under the charge of the court until to-morrow morning, and day is given.

And afterwards, to wit, at the term aforesaid of the court aforesaid, before the judge aforesaid, and on Friday, the seventeenth judicial day of said term, it being the thirtieth day of October, A. D. 1857, come the parties, by their attorneys, and also come the jury in this behalf empannelled and sworn, and, after hearing the conclusion of the evidence and the argument of counsel, have leave to separate under charge of the court until to-morrow morning, and day is given.

And afterwards, to wit, at the term aforesaid of the court aforesaid, before the judge aforesaid, and on Saturday, the eighteenth
575 judicial day of said term, it being the thirty-first day of October, 1857, come the parties, by their attorneys, and also come the jury in this behalf empannelled and sworn during the present term, and, after hearing the instructions of the court, upon their oaths aforesaid in this behalf, do say and find:

Verdict.

We, the jury, find for the plaintiffs in the sum of three thousand and eighty-three and $\frac{50}{100}$ dollars.

GEORGE S. ROSE,
Foreman.

And also report the following special verdict, to wit:

JOHN T. HUFF AND OTHERS
vs.
THE NEW ALBANY AND SALEM RAILROAD Company.

In Tippecanoe circuit court, October term, 1857.

Interrogations to be propounded to the jury, at the instance of the plaintiff, by the court.

Did the defendants, in the location and construction of their said railroad and the bridge thereof across the Wabash River, near the landing of the plaintiffs' ferry, so locate and construct said road and bridge as to occasion damage to the franchise and use of the plaintiffs' ferry, when the defendant might well have located her road and bridge and constructed the same across said river at another point, so as to have avoided such damage to the franchise and use of said ferry? If yea, say by your verdict at what additional expense to the defendant might she so have located and constructed her said bridge and road, so as to avoid such damage.

Answer. Yes, at an additional expense of six thousand dollars.

GEORGE S. ROSE,
Foreman.

JOHN T. HUFF ET AL.
vs.
THE NEW ALBANY AND SALEM RAILROAD Company.

In the circuit court, October term, 1857.

The defendant requires the jury to find specially upon the following questions of fact, to wit:

576 1. Did not the defendant employ competent and prudent engineers and servants in the location and construction of her said road upon and near the plaintiffs' lands?

Answer. Yes.

2. Do you find from the proof that the defendant in the location and construction of her said railroad was guilty of negligently, carelessly, unskillfully or willfully locating and constructing the same so as to do the plaintiff unnecessary damage?

Answer. No.

3. What amount of damage do you find, if any, occasioned to the plaintiffs' ferry by the defendant's railroad and bridge?

Answer. Twenty-seven hundred and eight dollars.

4. What amount of damage, if any, do you assess to the plaintiffs' lands exclusive of the damage to the ferry in consequence of the location and construction of the said defendant's railroad across the same?

Answer. Three hundred and seventy-five $\frac{50}{100}$ dollars.

5. In estimating the damages to the plaintiffs' land do you allow for the benefit which the defendant's railroad has been in protecting the lands of the plaintiffs from inundation?

Answer. Yes.

GEORGE S. ROSE,
Foreman.

Thereupon the defendant moves the court to set aside the verdict of the jury, and grant a new trial in this behalf, and day is given.

And afterwards, to wit, at the term aforesaid of the court aforesaid, before the judge aforesaid, and on Monday, the nineteenth judicial day of said term, it being the second day of November, A. D. 1857, come the parties; by their attorneys, and the defendant files the following reasons in support of her motion for a new trial herein, to wit:

Reasons for new trial.

STATE OF INDIANA, *Tippecanoe County, ss:*

In the circuit court to October term, 1857.

JOHN T. HUFF ET AL.
vs.
THE NEW ALBANY AND SALEM RAILROAD Company.

The defendant moves the court to set aside the verdict of the jury and grant a new trial herein for the following reasons:

577 1. Because the court erred in admitting improper testimony on the part of the plaintiffs.

2. Because the court erred in excluding proper testimony offered by the defendant.

3d. Because the court erred in giving instructions to the jury.

4th. Because the court erred in receiving instructions asked for by the defendant.

5th. The damages assessed are excessive for the injuries proven to have been done the ferry franchise.

6th. Because the verdict is not sustained by evidence.

7th. Because the verdict is contrary to law.

8th. Because the special findings are inconsistent with the general finding.

9th. Because the court erred in refusing to direct the jury to find on all the questions of fact, as asked by the defendant.

WILSON & McDONALD & CHASE & WILSTACH,
Attorneys for Defendant.

And day is given.

And afterwards, to wit, at the term aforesaid of the court aforesaid, before the honorable Charles H. Test, judge, and on Friday, the twenty-third judicial day of said term, it being the sixth day of November, A. D. 1857, come the plaintiff's by Pettit, Huff, Baird, and La Rue, and Behm, their attorneys, and the defendants also come by McDonald and Chase and Wilstach, their attorneys, and the court after hearing the argument of counsel, and being fully advised, overruled the motion to set aside the verdict and grant a new trial herein, and award judgment on said verdict, and the defendant accepts and the plaintiffs move the court to render judgment on said verdict in favor of said plaintiff, John T. Huff, individually, he having become the owner of said land and ferry to which said damages accrued since the commencement of this suit, as shown by proof produced by the court, to which motion said defendant consents, and asks that said judgment be rendered in conformity to said special verdict, to which the plaintiffs object, and the court being fully advised, order that judgment be now rendered in favor of said plaintiffs, John T. Huff, and in accordance with special verdict to the ordering of said judgment in accordance with special verdict the plaintiff excepts.

It is therefore considered by the court now here that said plaintiff, John T. Huff, do have and recover of and from said defendant the sum of three hundred and seventy-five dollars and fifty cents dam-
578 ages to the lands herein, occasioned by the location and construction of said railroad across the same, and the further sum of two thousand seven hundred and eight dollars damages occasioned to said ferry by said railroad and bridge-making, in all the sum of three thousand and eighty-three dollars and fifty cents, found by the jury aforesaid in this behalf, and the defendant prays an appeal to the Supreme Court, which is granted upon her filing bond in the penalty of five thousand dollars, conditioned according to law with security to the approval of the court within thirty days.

STATE OF INDIANA, *Tippecanoe County, ss:*

I, Daniel Royse, clerk of the Tippecanoe civil circuit court, in the State of Indiana, do hereby certify the above and foregoing to be a full, true, and complete transcript of all the proceedings, verdict of the jury,

and judgment rendered in the Tippecanoe circuit court in said State in the foregoing-entitled cause, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand as such clerk and affixed the seal of said Tippecanoe circuit court, at my office in Lafayette, on this 23d day of November, A. D. 1869.

[L. S.] DANIEL ROYSE, *Clerk.*
W. G. LITTLETON, *Dept.*

And come also Moses Fowler and Jonathan Fox, and also come George H. Justice, and others, by Huff & Langdon, their attorneys, and ask leave to file petitions praying that the receiver be ordered to pay out certain monies.

Petition of Fowler et al..

STATE OF INDIANA, *White County, ss :*

White common pleas court. Dec. 1, 1869.

IN THE CASE OF DOUW D. WILLIAMSON
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company et al.

To the judge of said court:

Your petitioners, Moses Fowler, Henry T. Sample, and Jona-
579 than Fox, show to the court that the judgment, a transcript of which is herewith filed, marked M, was recovered against said railroad company on account of the right of way for said company's road over lands belonging to the plaintiffs in said judgment; that one of the plaintiffs, Joseph S. Hanna, has departed this life since said judgment was recovered, but in his life-time the said company paid to him all his share of said judgment, as is shown by his receipt, a copy of which appears upon said transcript; and that James Spears, another of said plaintiffs, has assigned all his interest in said judgment to your petitioner, Moses Fowler, so that the balance remaining unpaid on the said judgment, amounting now, with interest, to $2,500, belongs exclusively to your petitioners, and they pray your honor for an order on the receiver, directing him to pay the said balance to them out of any monies yet in his hands to be accounted for herein.

HUFF & LANGDON,
Attorneys for Petitioners.

Exhibit M, referred to in above petition.

STATE OF INDIANA, *Clinton County, ss :*

Clinton circuit court, August term, A. D. 1854.

TUESDAY, August 8, A. D. 1854.—Present, honorable William P. Bryant, judge.

JOSEPH S. HANNA, HENRY T. SAMPLE, JAMES Spears, and Jonathan Fox,
vs.
THE NEW ALBANY AND SALEM RAILROAD Company.

Damages claimed on appeal. Change of venue from Tippecanoe County. Judgment, $2,000.

Come said plaintiffs, by Orth & Brackett, their attorneys, and the said defendant also, by S. C. Wilson, her attorney, and said parties file their agreement in writing herein, by which it is agreed that judgment may be entered for said plaintiff, and against said defendants, for the sum of two thousand dollars and the costs of this suit.

It is therefore considered and adjudged by the court now here, that said plaintiffs recover of and from said defendant the sum of two
580 thousand dollars, ($2,000,) and the costs of this suit, taxed at dollars and cents, making in all the sum of dollars and cents.

$772.22. Received of the New Albany and Salem R. R. Co. seven hundred and seventy-two dollars and $\frac{22}{100}$ dollars on the above judgment, and being in full of my third of same, as follows:

Five hundred and seventy-eight dollars in a credit on the stock of Hanna & Sample, and an order of Chase & Wilstach, agents, on J. B. Anderson, superintendent, for one hundred and ninety-four and $\frac{22}{100}$ dollars.

J. S. HANNA.
J. BARNER, *Clerk.*

APRIL 6TH, 1857.

Copied April 10th, 1857.

Upon which judgment was afterwards, to wit, on the 21st day of January, A. D. 1869, the following assignment endorsed, to wit:

STATE OF INDIANA, *Clinton County. ss:*

In the Clinton circuit court.

JAMES SPEARS AND OTHERS
vs.
THE NEW ALBANY AND SALEM RAILROAD Company. } Judgment.

For value received I hereby assign to Moses Fowler all my interest in the above judgments, and I hereby authorize and empower the clerk of the said circuit court to attach this assignment to the order-book of said court, and attest the same underneath the entry of said judgment.

Witness my hand and seal this 18th day of January, 1869.

JAMES SPEARS. [SEAL.]

[5-cts. U. S. revenue stamp.]

STATE OF INDIANA, *Tippecanoe County, ss:*

Before me, a notary public of said county, personally came James, Spears, and acknowledged the execution of the above assignment,
581 Witness my hand and notarial seal, this 18th day of January, 1869.

[SEAL.] C. W. LANGDON,
Notary Public.

Attest: DE WITT C. BRYANT,
Clerk Clinton Circuit Court.

THE STATE OF INDIANA, *County of Clinton, ss:*

I, DeWitt C. Bryant, clerk of the circuit court within and for said county and State, do hereby certify the foregoing and annexed to be

full, true, and correct copy of the judgment rendered by said court in the above-entitled cause, together with the endorsements made thereon, as the same appears of record and on file in my office.

Witness DeWitt C. Bryant, clerk of said court, and seal at office, in Frankfort, this 30th day of November, A. D. 1869.

[L. S.] DEWITT C. BRYANT, *Clerk.*

[Five-cents rev. stamp.]

Petition of Noah Justice, et al.

STATE OF INDIANA, *White County, ss:*

White common pleas court, Dec. 1, 1869, before Judge LaRue.

IN THE MATTER OF THE CAUSE BROUGHT BY Douw D. Williamson, to foreclose certain mortgages,
brought against
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company and others.

To the Hon. John M. LaRue, judge of said court:

Your petitioners, Noah Justice, George H. Justice, Rhoda Rose, Julia Rose, and Sarah J. Moore, heirs-at-law of Noah Justice, deceased, show to your honor that they have a judgment against the said railroad company, recovered in the Tippecanoe circuit court, on the day of May, 1869, in full force and unpaid, as to $1,545 thereof, including interest; that said judgment was recovered on account of the right
582 way over the lands described in the complaint, on which said judgment was recovered, as set forth in the record of said judgment, a transcript of which is herewith filed mark' " W," and made a part of this petition. Said company's road having, in the above-named cause, passed into the hands of a receiver, and been sold under the order of said court, your petitioners pray that the balance of said judgment be directed to be paid by the receiver out of any funds in his hands not yet accounted for. Your petitioners show that they were not impleaded in the said cause, and had no notice thereof until after the said road had been ordered to be sold.

HUFF & LANGDON,
Attorneys for Plaintiffs.

And said petitions are ordered to be filed, to which the plaintiff excepts, and plaintiff files a demurrer to each of said petitions.

Demurrer to petition of Huff.

In the White common pleas court.

CHARLES E. BILL
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, and others.

The plaintiff demurs to the petition of John T. Huff on file in this cause for the following grounds of objection:

Said petition does not state facts sufficient to constitute a cause of action or to entitle to the relief therein sought.

CRAWFORD & CHASE & WILSTACH,
Attorneys for Plaintiff.

Demurrer to petition of Fowler, et al.

In the White common pleas court.

CHARLES E. BILL
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, and others.

The plaintiff demurs to the petition of Moses Fowler and others on file in this cause for the following grounds of objection:

583 Said petition does not state facts sufficient to constitute a cause of action, or to entitle the petitioners to the relief therein sought.

CRAWFORD & CHASE & WILSTACH,
Attorneys for Plaintiffs.

Demurrer to petition of N. Justice, et al.

In the White common pleas court.

CHARLES E. BILL
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, and others.

The plaintiff demurs to the petition of Noah Justice, George H. Justice, Rhoda Rose, Julia Rose, and Sarah J. Moore, on file in this cause for the following grounds of objection:

Said petition does not state facts sufficient to constitute a cause of action, or to entitle the petitioners to the relief therein sought.

CRAWFORD & CHASE & WILSTACH,
Attorneys for Plaintiff.

And the questions arising thereupon are taken under advisement, and the receiver files his report as follows, to wit:

Receiver's report.

CHARLES E. BILL, TRUSTEE,
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company.

White common pleas court.

James F. Joy, upon his oath says that the annexed exhibit contains, as he verily believes, a full, true, and complete statement of his receipts and disbursements for the period therein mentioned.

JAMES F. JOY.

STATE OF MICHIGAN, *Wayne County, ss:*

Before me, a notary public in and for said State and county,
584 personally appeared the above-named James F. Joy, and made oath to the truth of the foregoing affidavit.

Witness my hand and seal this first day of December, 1869.

[L. S.] LEAN STEVENS,
Notary Public, Wayne County, Michigan.

Exhibit referred to in receiver's report.

Receipts and disbursements of cash made by James F. Joy, receiver of the Louisville, New Albany and Chicago Railroad Company from May 1, 1869, to November 30, 1869, inclusive:

RECEIPTS.

Balance from last account		$29,245 47
From freight	45,871 60	
" passengers	39,968 39	
" mails	9,200 80	
" express	4,111 91	
" telegraph	281 81	
" interest	483 06	
" military transportation	342 92	
" miscellaneous sources	1,499 55	
		101,760 04
		$131,005 51

DISBURSEMENTS.

For office and station service	$13,986 61	
" flag switch and watchman	687 03	
" train service	6,448 63	
" locomotive service	6,803 23	
" oil waste and tallow	900 14	
" fuel	4,107 58	
" preparing fuel	1,011 85	
" repairs of engines	8,077 18	
" repairs of cars	8,565 15	
" repairs of buildings	560 72	
" repairs of bridges	4,170 56	
repairs of roadway	31,065 47	
585 " new iron	14,599 79	
" operating of telegraph	1,379 02	
" stationery and advertising	745 64	
" legal expenses	4,808 60	
" injuries to animals	1,246 13	
" damages on freight	264 41	
Earnings refunded	717 77	
Amount brought forward	$110,145 51	$113,005 51
For taxes, rents, and insurance	532 79	
" machine-shop expenses	604 37	
" engine and car hire	102 95	

" national tax	1,368 20	
" discount and exchange	56 07	
" ties	3,115 28	
" switch and car key account	40 00	
" sundry liabilities	35 20	
		$116,000 35
		$15,005 16

And this cause is continued generally until the twenty-fourth day of January, 1870, at 11 o'clock a. m.

STATE OF INDIANA, *White County, ss:*

I, Daniel D. Dale, clerk of the court of common pleas of said county, do hereby certify that the above and foregoing is a true and complete transcript of all the proceedings had by said court in the above-entitled cause, together with all the papers filed therein, as the same appear of record remaining in my office.

Witness my hand and the seal of said court at office in Monticello, Indiana, this January 5, 1870.

DANIEL D. DALE, *Clerk.*

586 United States circuit court, district of Indiana.

I, J. D. Howland, clerk of said court, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record and proceedings in the above-entitled cause in said court, as fully as the same remain in my office.

Witness the seal of said court and my hand at Indianapolis, this 14th day of April, A. D. 1873.

[SEAL.] J. D. HOWLAND, *Clerk.*

(Indorsement on cover:) No. 428. Gideon Putnam, John S. Shaw, et al. vs. Charles E. Bill, trustee, &c. Indiana C. C. U. S. Filed 25 April, 1873.

Abstract of Record and Argument.

SUPREME COURT OF THE UNITED STATES.

No. 147.

GIDEON PUTNAM, JOHN S. SHAW, et al., Appellants,

VS.

CHARLES E. BILL, Truetee, Etc.

Appeal from the Circuit Court of the Uuited States for the District of Indiana.

SAMUEL A. HUFF, JOSEPH E. McDONALD, Attorneys for Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1874.

Gideon Putnam and Stella C. Putnam (his wife), John Savage Shaw, Laura W. Shaw, Laura H. Shaw, Frank E. Shaw, Gideon Shaw, Helen Shaw, James E. Emerson (Administrator of Charles N. Emerson deceased), Augusta J. Emerson (Administratrix of Edward B. Emerson deceased), Blanche V. Babcock and Myron N. Babcock (her husband), Henry W. Shaw and Avery Williams (impleaded in the Circuit Court with the Louisville, New Albany and Chicago Railroad Company, and the Louisville, New Albany and Chicago Railway Company), APPELLANTS,

vs.

Charles E. Bill, Trustee, etc., APPELLEES.

APPEAL FROM THE CIRCUIT COURT FOR THE DISTRICT OF INDIANA.

ABSTRACT OF THE RECORD, AND ARGUMENT.

On the 1st day of August, 1857, Douw D. Williamson, trustee and predecessor of the appellee, Bill, filed a bill in chancery in the Circuit Court of the United States for the district of Indiana. This bill appears in the printed record, beginning on page 1 and ending on page 17, where the original subpœna appears.

The defendants to that bill were, The New Albany and Salem Railroad Company—James Brooks and John B. Anderson.

Such proceedings were had upon the bill so filed, that at the November term, 1858, of said Circuit Court, on the 16th day of December, 1858, a compromise decree was entered, which ap-

pears in the printed record, beginning on page 48 and ending on page 51. By the terms of this decree, which assumed to speak for all persons interested, it was provided that the railroad should be surrendered to the holders of the third and fourth mortgage bonds and certain income bonds that had been issued by the Railroad Company. (See page 49.) But the railroad having been placed in the hands of Williamson by a decree of June 23d, 1858, to enable him to raise money for the payment of certain debts not covered by any of the mortgages, it was provided that the decree should be subject to all the provisions and stipulations contained in the decree of June 23d, 1858. (See page 51.) This decree of June 23d, 1858, is only important, now, as showing how the road was held at the time of the compromise decree of December 16th, 1858. It appears in the printed record, beginning on page 45 and ending on page 47, and the particular provision under which Williamson had the road surrendered to him appears on page 47.

Now, although by the decree of December, 1858, the road was to be surrendered to the holders of the third and fourth mortgage bonds, and the income bonds, in common with the holders of the stock of the company reduced to ten per cent., as a matter of fact it never was so surrendered, but remained in the hands of said Williamson, the trustee complainant, under the arrangement of June 23d, 1858, until, by the action of the parties through the process of the State Court, as hereafter shown, it was delivered to the holders of the first and second mortgage bonds. (See supplemental bill filed by the appellee June 2d, 1871, beginning on page 109 and ending on page 116 of printed record.) The particular averments of this supplemental bill relating to the possession by Williamson, under the decree of June 23d, 1858, appear on page 112.

In making an abstract of the record, we now allude to this fact that the court may better understand the purpose of the litigation inaugurated by the appellants upon which this appeal rests. The road, having thus passed into the hands of Williamson, the then trustee complainant, and the special trustee, under the decree of June 23d, 1858, remained in his control under the advice and by the request of the holders of the first and second mortgage bonds, until after a sale made in pursuance of a decree of a State court in a proceeding commenced Septem-

ber 4th, 1868, under which it was turned over to the holders of the last named bonds, to the exclusion of all other parties.

The proceedings of the State Court appear in the printed record, beginning on page 275 and ending on page 388, except as to some collateral matters introduced into those proceedings by parties not concerned in this appeal.

These proceedings show that Williamson, the then trustee, was acting under the control of the parties interested in the first and second mortgages—that they were instituted at their instance; but they make no allusion whatever to the bill pending in the Circuit Court of the United States, nor to any decree or trusts based upon the said bill. Yet it appears, when we turn to the record, before this court, that the resort was had to the State Court in defiance of the authority and jurisdiction of the Circuit Court in which said bill was pending. The judgment was obtained upon the proceedings in the State Court on the 8th day of April, 1869. (See page 362.)

The case stood thus until November 1st, 1869, when John Savage Shaw, one of the appellants, appeared in the Circuit Court of the United States, and sought leave of that Court to file a petition for himself and on behalf of others standing in like relation. (See page 79.) Thereupon, it being made to appear to the court that Willlamson, the trustee complainant in the original bill, had departed this life, on the motion of Shaw, an order was made requiring Charles E. Bill. an alternative trustee named in the said mortgages, to cause himself to be substituted as the trustee complainaint. (See page 79.)

This rule was certified to the Appellee, then in New York, and on the 3d day of May, 1870, he made his appearance, and moved to dismiss the original and supplemental bills. (See pages 79 and 80.)

Thus Shaw, one of the appellants, obtained his standing in the Court.

Pursuant to the leave thus granted, the appellant, Shaw, on the 29th day of August, 1870, filed his petition; which appears in the record, beginning on page 81 and ending on page 96. This includes the exhibit of a copy of the mortgage of the property of the Company under the decree of June 23d, 1858, and the petition, without the exhibit, ends on page 88.

The first action taken upon the petition thus filed was a

special appearance of the New Albany and Salem Railroad Company, by Messrs. Hendricks, Hord and Hendricks, who, on the 17th day of November, 1870, made a motion to dismiss the petition. (See page 97.)

No action seems to have been taken by the Court on this motion, and the reference to it here is only for the purpose of returning to it hereafter in the discussion of the proposition that the final decree against the Company, upon its default, was erroneous, in view of other facts appearing, and hereafter to be noted. This motion was made in behalf of the corporation by its original corporate name, although this name had been changed in due form of law on the 10th day of November, 1859, to that of the Louisville, New Albany and Chicago Railroad Company. (See supplemental bill filed June 2d, 1871, and the averment appearing on page 110.)

On the 7th day of August, 1871, the complainant, Charles E. Bill, appeared by Hon. T. A. Hendricks, and took a default decree pro confesso against the Louisville, New Albany and Chicago Railroad Company. (See page 120.)

On the 20th day of June, 1871, the complainant, Charles E. Bill, again appears, by the Hon. T. A. Hendricks, and asks for leave to sue out subpœna in chancery against the Louisville, New Albany and Chicago Railroad Company, (See page 221.)

No subpœna was sued out under this leave, but on the 20th day of November, 1872, before the cause was set down for final hearing, the appellants caused the affidavit of Mr. Putnam to be filed—showing that one of the directors of the Louisville, New Albany and Chicago Railroad Company was then residing in the State of Indiana. (See page 228.)

We note this fact because, under a statute of the State of Indiana, process may be served against the Company on one of its directors, to which we will call the attention of the Court. Finally, just previous to the hearing, on the 7th day of November, 1872, a motion is made by the complainant by his solicitors, among whom appear Messrs. Hendricks, Hord and Hendricks, to suppress certain depositions that had been taken at the instance of the appellanls. (See page 227.)

Thus we find the complainants represented by the very counsel who on the 17th day of November, 1870, had appeared as the counsel of the Railroad Company, and we do not believe it

a safe practice to allow a case to be set down for final hearing upon a default and decree—pro confesso—taken under such circumstances.

Having progressed thus far with the preliminary facts disclosed by the record, we proceed to note the pleadings, upon which the final decree was rendered on the 21st day of November, 1872.

After Shaw had filed his petition under the leave granted as above shown, a Receiver was appointed on his motion on the 29th day of November, 1870. (See pages 98 to 103.)

Yet not until the 2d day of June, 1871, was any step taken by Mr. Bill towards bringing the case forward. His efforts, directed by the holders of the 10 and 8 per cent. bonds appear constantly in defiance of the jurisdiction of the Court. We instance the effort before the Receiver was appointed to withdraw the case from the jurisdiction of the Court, upon the first appearance of Mr. Bill, as the trustee complainant, as heretofore noted in this abstract.

After the appointment of the Receiver, it appears that in contempt of the decree of his appointment, the parties representing the 10 and 8 per cent. bond holders, seized upon the funds and property that were directed to be handed over to the Receiver, as is manifested from the action of the Court on the 30th day of November, 1870, in holding certain parties guilty of contempt. (See page 105.)

On the 1st day of December, 1870, the appellants, other than John Savage Shaw, filed their petition to be let in as defendants. (See page 103.)

There seems to have been no action by the Court on this petition, but the petitioners all joined in the answer and cross bill hereinafter noted.

On the 2d day of June, 1871, the trustee complainant produced and filed his supplemental complaint, which appears on the record, beginning on page 109 and ending on page 116.

The supplemental bill filed June 2d, 2871, was demurred to by Shaw, and the demurrer was overruled by the Court. (See pages 116 to 118.)

The grounds of the demurrer are:

1. While the supplemental bill shows that large amounts of interest and the entire principal of the 10 and 8 per cent.

bonds remain unpaid, it is not averred that any demand of payment has been made as required by the condition of the several mortgages.

2. The trustee, who ought to have represented the holders of the bonds secured by the mortgages subsequent to that of 1852, put himself upon the record as the representative of only the 10 and 8 per cent. bonds, and in hostility to all others.

3. It is admitted by the bill that the parties for whom the trustee complains, did go out of the jurisdiction of the Court, and, in contempt thereof, seize upon the property of the Company, and, in doing so, surrendered their bonds.

The answer of the appellants to the supplemental bill was filed September 4th, 1871, and appears in the record, beginning on page 120 and ending on page 129.

The particular feature of this answer to which we desire to call the attention of the Court is that part of it which relates to the suit in the State Court, and the conduct of the parties to that suit who were claiming relief by the supplemental bill. In the supplemental bill it was found necessary for the trustee, in behalf of those he had chosen to serve, to excuse this conduct in the use they had made of Williamson, the preceding trustee, in procuring the action of the State Court, without any reference, whatever, to the trusts he had assumed under the decree of December 16th, 1858. So, it will be seen by recurring to the supplemental bill of June 2d, 1871, at page 113, the trustee, after alluding to that suit, says:

"Your orator further shows unto honors tnat the said proceedings in said State Court to foreclose said mortgages was instituted in good faith by said Williamson in the belief and under advice by counsel, that this action was no longer pending, and that a foreclosure could not be obtained in the proceeding, but that a new action would have to be instituted to obtain a sale of said Railroad and appurtenances."

In answer to this allegation in the supplemental bill, the appellants show that so far from the facts being as stated by the trustee, he had, himself, after he was required by the Federal Court to place himself on its record, caused himself to be substituted for Williamson in the State Court. (See page 122.)

It is also averred, in the answer of the appellants, that Talman and his associates, for whom Williamson acted in the State Court, had knowledge of the trusts that Williamson had

assumed under the decree of June 23d, 1858, and December 16th, 1858. And it is in effect charged that the conduct of the parties in respect to the suit in the State Court, was contumacious. (See pages 124 and 125.)

These averments of the answer are fully sustained by the record; for it appears, upon reference to the record of the suit in the State Court, that Mr. Bill appeared in the State Court on the 1st day of December, 1869. (See page 388.)

He had been required to appear in the Federal Court by an order entered at the first of the November term, 1869. (See page 79.)

He did not appear in the Federal Court until May 3d, 1870, and then presented himself with a motion to dismiss the case from that Court. (See pages 79 and 80.)

To show the want of sincerity of Talman and his associates in this apology for putting Williamson forward in the State Court, we refer to the record, page 78, where it will be seen that as late as July, 1869, after the sale under the action of the State Court, Mr. Williamson appeared in this very case in the Federal Court, and filed a report of the sale of the Gosport branch of the company's road. This report was sworn to by Mr. Williamson on the 8th day of February, 1869, while the proceeding in the State Court was being pressed to a hasty judgment.

As a matter of fact, the whole transaction, from the time it was resolved by Talman and his associates to evade the jurisdiction of the Federal Court, is an exhibition of fraudulent trickery, in proof of which we refer to the depositions of Talman, Schayler and Lewis, in which, upon their cross examination, it is clearly shown that the object of going into the State Court was to cover up the conduct of the parties in respect to the trusts that were created by the decrees of the Federal Court, of which no account whatever had been given to that court.

For these reasons we insist that, in so far as the supplemental bill was intended to aid Talman and his associates, all relief should have been denied them.

The depositions of Talman, Schuyler and Fitch, as to their examination in chief, appear in the record, beginning on page 232 and ending on page 241. The cross examination of Talman commences on page 242 and ends on page 247. The cross

examination of Schuyler commences on page 247 and ends on page 251. The cross examination of Fitch commences on page 252 and ends on page 254. This last named deposition is accompanied by an exhibit running from 254 to 257. The deposition in chief of Lewis commences on page 258 and ends on page 262. The cross examination of Lewis commences on page 262 and ends on page 268, followed by accompanying exhibits extending to page 269. From these depositions it is clear that the holders of ten per cent. and eight per cent. bonds upon their organization of the new company in pursuance of their purchase under the proceeding in the State Court, surrendered their bonds and converted them into stock of the new company. (See Lewis' deposition, pages 265 and 268, and accompanying exhibits.) See also the depositions of Talman and Schuyler, in so far as they speak of the formation of the new company, and of the division of the earnings of the road after its formation.

The record discloses the following facts as to the bonded debt of the Louisville, New Albany and Chicago Railroad Company:

The Company, in 1851, had commenced building a railroad from New Albany northward, and contemplated extending it to Indianapolis by way of Gosport, and finally determined to build it to Michigan City, on Lake Michigan, a distance of about 288 miles from New Albany. On the 8th day of February, 1851, having made considerable progress in its work towards Gosport, it resolved to issue its bonds to the amount of a half million dollars, bearing ten per cent. interest, secured by a mortgage on that part of its road lying between New Albany and Gosport. This measure was adopted, and what is called the first mortgage was executed.

On the 14th day of February, 1852, another mortgage was made by the company, covering the entire line of its road from New Albany to Michigan City, to secure an issue of bonds amounting to two millions three hundred and twenty-five thousand dollars, bearing eight per cent. interest.

On the 3d day of November, 1853, the company made another mortgage, covering the entire line from New Albany to Michigan City, to secure bonds amounting to one million dollars, bearing seven per cent. interest.

On the 1st day of February, 1855, the company made another

mortgage, covering the entire line of its road from New Albany to Michigan City, to secure bonds amounting to one million dollars, bearing seven per cent. interest.

And on the 21st day of December, 1855, the company executed another mortgage on the personal property of the company, to secure bonds amounting to a half million dollars, bearing ten per cent. interest.

These several mortgages are copied at length in the printed record, beginning on page 284 and ending on page 301. The first described begins on page 284 and ends on page 287. The second described begins on page 287 and ends on 290. The third described begins on page 290 and ends on 294. The fourth described begins on page 295 and ends on 298. The fifth described begins on page 298 and ends on page 301. The 1st, 2d, 3d and 4th describe the property covered as follows;

All the following, present and in future to be acquired property of the parties of the first part, pertaining to that part of their road which lies between New Albany and Gosport; that is to say, their road made and to be made, including the right of way and the land occupied thereby, together with the superstructure and tracks thereon, and all rails and other materials used thereon, or procured therefor, inclusive of the iron rails, purchased or to be purchased, or paid for with the above described bonds, or the money obtained therefor, and the machinery purchased with the same, bridges, viaducts, culverts, fences, depots, grounds and buildings thereon, engines, tenders, cars, tools, material, machinery, and all other personal property, right thereto or interest therein, pertaining as aforesaid, together with the tolls, rents, or income to be had or levied therefrom, and all franchises, rights and privileges of the said parties of the first part, of, in, to, or concerning the same. This description applies to all, except that the mortgages subsequent to that of 1851 embrace the entire line of road.

By this it will be seen that the only future-to-be-acquired property covered by the respective mortgsges was such as might be purchased with the bonds secured by each one, or the money derived from such bonds.

Yet in the final decree no distinction is made whereby the third and fourth mortgages were allowed to operate on any of the property of the company. Nor was any method adopted or

prescribed by the court for ascertaining any such distinction.

That we are correct in our view, we have no doubt; and it appears that the matter was so understood by those who were instrumental in preparing and negotiating the bonds. Before the filing of the original bill, Mr. Brooks, who was President of the Company, on the 17th day of April, 1857, made a report to the bond-holders, which is copied at length in the record, beginning on page 29 and ending on page 32, in which he uses the following language: "The first mortgage bonds, $3,000,000, [meaning those of 1851 and 1852, or the ten per cent. and eight per cent. bonds,) covers the road and most of the permanent improvements on it, and but very little of the rolling stock." The second and third mortgage and income bonds cover the principal part of the rolling stock and the material on hand for the building of cars and engines, fuel, &c., together with the machinery in the shops, except such part as is attached to the realty. If the first mortgagees should foreclose their mortgages on the road, they have no machinery, or any thing to work it, unless they purchase the interest of the mortgagees which come after them. Under these circumstances, three courses are left to tne bond-holders" These remarks of Mr. Brooks' appear on page 30.

On the 1st day of June, 1872, the appellants filed a cross bill against the trustee, which appears in the record, beginning on page 199 and ending on page 210.

It charges among other things, in substance, that except as to about the sum of $30,000 of the 10 and 8 per cent. bonds, one Talman with his associates and confederates, had surrendered all the bonds of that description, in a fraudulent attempt to evade the jurisdiction of the Federal Court in this action; that this was done by a resort to a State Court, in which the proceedings then pending in the Federal Court were entirely ignored, and without the slightest references to the decrees of June 23d, 1858, and December 16th, 1858, and in utter disregard of the trusts thereby created; that said Talman and his associates, to effect the object aimed at, in the said resort to the State Court, had manipulated and controlled the former trustee, Williamson, to the time of his death, and the complainant trustee, Charles E. Bill, after he succeeded to the trusts declared in the several mortgages, and it is insisted in the cross bill, that, for these

reasons, the said Talman and his associates are not entitled to share in the property covered by the said mortgages, and that the trustee complainant, as to them, is entitled to no relief. (See pages 200 to 204, inclusive.)

The cross bill further charges, in substance, that the mortgages given to secure the 10 and 8 per cent. bonds, only applied to property thereafter to be acquired that might be purchased with the bonds secured by them, or with money obtained therefor; and that the moneys derived from the 3d and 4th mortgage bonds had been expended in supplying the machinery and materials used in the equipment of the road, and that such machinery and its renewals remain and form a part of the tangible property of the Company's road. (See pages 206 and 207.)

Other charges appear in the cross bill in relation to the misconduct of Charles E. Bill, in his subserviency to Talman and his associates, in aid of their contempt of the jurisdiction and decrees of the Federal Court. (See pages 208 and 209.)

The cross bill was filed by leave of the Court, after the report of the Master upon the accounts had been filed, and, on the 10th day of June, 1872, an answer to the cross bill was field. (See pages 213 to 219, inclusive.)

In this answer it will be observed that, while the complainant trustee, in his character as defendant to the cross bill, in words denies for Talman and his associates, any actual fraund in their conduct, in respect to the proceedings in the State Court, he admits the facts which, of themselves, are conclusive against said Talman and his associates, and establish beyond question, a purposed evasion of the jurisdiction of the Federal Court and its decrees; and, though the trustee for Talman and his associates denies any intended contempt on their part, in removing from the Court's jurisdiction the sum of $180,000 of funds ordered to be paid over to the Receiver, he admits for them the fact that said sum was removed, and they now propose to place that amount as a credit upon the 10 and 8 per cent. bonds held by them. (See page 216.)

This is an evasion, as is shown by the depositions of Talman, Schuyler, Lewis and Fitch, whereby it is made to appear that in the face of the decree, and by the advice of Joy, who stands upon the record convicted of contempt, the money thus removed had been disposed of in the way of dividends upon the

stock of another corporation, tracing its organization to the proceedings in the State Court.

As another instance of evasion on the part of the trustee and Talman and his associates, we cite the averment in the answer to the cross bill on page 213, in which he says "he is a stranger to the matter set forth in the cross bill in reference to the institution of an action in the White Common Pleas Court of Indiana, but he is informed and believes that all and singular the allegations of the said cross bill are untrue and false, and he denies upon such information and belief that the said Talman and his associates caused and procured the said Williamson to institute said action in said State Court." Now this is a most remarkable averment coming from Charles E. Bill, the trustee, who had, as far back as the 1st of December, 1869, caused himself to be made plaintiff, as Williamson's successor, in that State Court proceeding, and who had for six months thereafter kept himself absent from the jurisdiction of the Federal Court, although ruled to place himself in the latter jurisdiction early in November, 1869.

We cite these evasions in support of our proposition that, under the pleadings and evidence before this Court, it was the manifest duty of the Circuit Court to deny to Talman and his associates any relief.

The appellants, in their cross bill, insist as a matter of law, that the mortgages made in 1851 and 1852, by their terms, as to future required property were limited to such as might be purchased with the bonds secured by them, respectively, or with money obtained therefor, and that as to the property purchased with the bonds, or money derived from them, secured by the mortgages of 1853 and 1855, the holders of these latter bonds are entitled to a lien thereon in priority to the holders of the bonds of 1851 and 1852. The particular averments of the cross bill, as to this construction of the mortgages are as follows:

"These defendants charge that, at the time these trust deeds of 1853 and 1855 were executed, the bonds known as the 8 and 10 per cent. bonds and secured by the trust deeds of 1851 and 1852, had been negotiated and the proceeds thereof had been invested in the construction of the said road and in iron rails and machinery for the said road, and the liens of the said trust deeds of 1851 and 1852 attached to said iron rails and machinery so purchased, but they charge that a large portion of the

iron rails and machinery necessary for the completion and equipment of said road still remained unpurchased and unpaid for, and they charge that this deficiency was supplied by the bonds issued under the trust deeds of 1853 and 1855 on the funds arising from the sale of said bonds, and that the iron rails and machinery, so purchased and paid for, were of the value of the bonds invested and sold, and that said iron rails and machinery, or the renewals thereof, are still in and upon said road and from a part of the tangible property of said road." (See page 206.)

To these averment of the cross bill the appellee, as trustee, still acting in behalf of Talman and his associates, answers as follows:

"While this defendant admits to be true, on information and belief, that the portions of the rails and superstructure on the line of said road, and portions of the machinery have been acquired by purchase since the dates specified in the mortgages of 1851 and 1852, he submits as a matter of law that such after acquired property is fully embraced and covered by said mortgages of 1851 and 1852." (See page 217.)

In a former part of the paragraph just quoted the appellee insists that the rights of the parties were changed by the decree of December 1858, and that the appellants are estopped by that decree. The provisions of the decree of December 16th, 1858, in reference to this branch of the subject expressly provides that the arrangement thereby entered into shall be subject to the mortgages of 1851 and 1852, and that the lien of those mortgages shall "remain valid and unimpaired," &c. (See page 50.

This does not look as though the holders of bonds secures by the mortgages of 1851 and 1852 were to be entitled by this decree to a lien upon any property not covered by their mortgages. It merely provides that their liens shall remain unimpaired.

It is insisted on the part of the appellants that, as to the bonds of 1853 and 1855, held by them, the decree of December 16, 1858, does not affect their right, and that by the terms of that decree there was no attempt to extend the securities of the bonds of 1851 and 1852 to any property not embraced in the language of the mortgages given to secure them.

As the record stands, the appellants, by their cross bill, charge that the bonds secured by the mortgages of 1853 and

stock of another corporation, tracing its organization to the proceedings in the State Court.

As another instance of evasion on the part of the trustee and Talman and his associates, we cite the averment in the answer to the cross bill on page 213, in which he says "he is a stranger to the matter set forth in the cross bill in reference to the institution of an action in the White Common Pleas Court of Indiana, but he is informed and believes that all and singular the allegations of the said cross bill are untrue and false, and he denies upon such information and belief that the said Talman and his associates caused and procured the said Williamson to institute said action in said State Court." Now this is a most remarkable averment coming from Charles E. Bill, the trustee, who had, as far back as the 1st of December, 1869, caused himself to be made plaintiff, as Williamson's successor, in that State Court proceeding, and who had for six months thereafter kept himself absent from the jurisdiction of the Federal Court, although ruled to place himself in the latter jurisdiction early in November, 1869.

We cite these evasions in support of our proposition that, under the pleadings and evidence before this Court, it was the manifest duty of the Circuit Court to deny to Talman and his associates any relief.

The appellants, in their cross bill, insist as a matter of law, that the mortgages made in 1851 and 1852, by their terms, as to future required property were limited to such as might be purchased with the bonds secured by them, respectively, or with money obtained therefor, and that as to the property purchased with the bonds, or money derived from them, secured by the mortgages of 1853 and 1855, the holders of these latter bonds are entitled to a lien thereon in priority to the holders of the bonds of 1851 and 1852. The particular averments of the cross bill, as to this construction of the mortgages are as follows:

"These defendants charge that, at the time these trust deeds of 1853 and 1855 were executed, the bonds known as the 8 and 10 per cent. bonds and secured by the trust deeds of 1851 and 1852, had been negotiated and the proceeds thereof had been invested in the construction of the said road and in iron rails and machinery for the said road, and the liens of the said trust deeds of 1851 and 1852 attached to said iron rails and machinery so purchased, but they charge that a large portion of the

iron rails and machinery necessary for the completion and equipment of said road still remained unpurchased and unpaid for, and they charge that this deficiency was supplied by the bonds issued under the trust deeds of 1853 and 1855 on the funds arising from the sale of said bonds, and that the iron rails and machinery, so purchased and paid for, were of the value of the bonds invested and sold, and that said iron rails and machinery, or the renewals thereof, are still in and upon said road and from a part of the tangible property of said road." (See page 206.)

To these averment of the cross bill the appellee, as trustee, still acting in behalf of Talman and his associates, answers as follows:

"While this defendant admits to be true, on information and belief, that the portions of the rails and superstructure on the line of said road, and portions of the machinery have been acquired by purchase since the dates specified in the mortgages of 1851 and 1852, he submits as a matter of law that such after acquired property is fully embraced and covered by said mortgages of 1851 and 1852." (See page 217.)

In a former part of the paragraph just quoted the appellee insists that the rights of the parties were changed by the decree of December 1858, and that the appellants are estopped by that decree. The provisions of the decree of December 16th, 1858, in reference to this branch of the subject expressly provides that the arrangement thereby entered into shall be subject to the mortgages of 1851 and 1852, and that the lien of those mortgages shall "remain valid and unimpaired," &c. (See page 50.

This does not look as though the holders of bonds secures by the mortgages of 1851 and 1852 were to be entitled by this decree to a lien upon any property not covered by their mortgages. It merely provides that their liens shall remain unimpaired.

It is insisted on the part of the appellants that, as to the bonds of 1853 and 1855, held by them, the decree of December 16, 1858, does not affect their right, and that by the terms of that decree there was no attempt to extend the securities of the bonds of 1851 and 1852 to any property not embraced in the language of the mortgages given to secure them.

As the record stands, the appellants, by their cross bill, charge that the bonds secured by the mortgages of 1853 and

1855 were used in the purchase of rails and machinery, and that the rails and machinery so purchased are pledged as security for the payment of these bonds; and it is not denied that such was the case, nor is it denied that such investments were made to the full amount of the bonds secured by said mortgages of 1853 and 1855.

Hence it is left as a question of law for the Court to determine: Are the mortgages of 1851 and 1852 by their terms, liens on after required property purchased with bonds secured by the mortgages of 1853 and 1855?

The appellants present the following propositions arising from this record on which they claim a reversal of the decree of the Circuit Court:

I. The decree against the Louisville, New Albany and Chicago Railroad Company is erroneous, because it appears that said company was defaulted at the instance of counsel who had theretofore appeared specially for said company, and no process of subpœna was afterwards taken out upon the supplemental bill against the said company before such default, nor at any time thereafter before final decree.

II. The supplemental bill of complaint upon which the final decree is founded shows upon its face that the complainant trustee, and those in whose behalf he prosecuted said bill, are not entitled to the relief prayed, nor to any relief whatever.

III. In the final decree of the Circuit Court the provisions contained in the several mortgages as to the property covered by them respectively, is wholly disregarded by the court in this, to wit:

1st. The mortgage of 1851, being the first of the series, by its express terms limits operations as to future acquired property of the company to such as may be purchased with the bonds thereby secured, or with money obtained therefor.

2d. The mortgages of 1852, being the second of the series, by its express terms limits its operations as to future acquired property of the company to such as may be purchased with the bonds secured thereby, or with money obtained therefor.

3d. The mortgages of 1853 and 1855, being the third and fourth of the series, pledged as security for the payment of the bonds by them respectively secured, the property that might be purchased with such bonds, or with money obtained therefor.

Whereas, by the final decree of the Circuit Court the mortgages of 1851 and 1852 are held to cover all the property of the company, whether acquired by purchase with the bonds secured by the subsequent mortgages or with money obtained for such latter bonds, or otherwise.

IV. The parties in whose sole behalf the decree was rendered, according to the pleadings and evidence, had, before the filing of the supplemental bill upon which the final decree rests, surrendered the bonds secured by the mortgages foreclosed in their behalf, in such form as to forfeit their standing in the court, and should therefore have been denied any relief by its final decree.

To the first proposition we cite only the record, which exhibits an anomaly in chancery practice that ought not to be tolerated. The corporation defendant, after an appearance by by counsel is put to default, without any note that the counsel who appeared for it was proceeding against it. Against this corporation, after the default was taken, and after the decree pro confesso had been entered, a subpœna in chancery was directed to be taken out, but it was not taken out, and the case went on to final decree upon the decree pro confesso so taken as to the corporation defendant.

True, the Railroad Company is not here complaining of this action of the Court. Yet the appellants have interests involved which it was the duty of the corporation to guard, and they claim that they have a right, by their appeal to ask a review of the record in this particular, and a reversal of the decree, if the action of the Court was irregular.

In Indiana there is a statute which provides for the service of process of summons against a corporation on one of the directors in case other officers of the corporation are not accessible. (See Act of December 21st, 1858—2d Gavin and Hord, page 63.)

The second proposition relates to the demurrer to the supplemental bill of complaint, and embraces the following points of objection:

1. By the several trust deeds it is provided that demand shall be made at the place where the bonds are made payable,

and sixty days are allowed after demand before the right of action of the trustee shall accrue; and there is no averrment that any such demand was ever made.

2. The trustee, who should have stood indifferent as to the holders of the securities of all the deeds of trust, put himself forward as only the representative of the parties holding securities under the trust deeds of 1851 and 1852, and in open hostility to the claims of all who held under the trust deeds of 1853 and 1855.

3. The supplemental bill discloses such conduct on the part of the trustee and of those to whom he allied himself in the litigation as rendered them unfit to become the recipients of any favor or relief at the hands of a court of equity.

We deem the statement of the points involved in this proposition in the light of the record sufficient to seriously call in question the ruling of the court on the demurrer, and without any elaboration we pass to the third proposition.

This relates to the proper construction to be placed upon the language contained in the several trust deeds in respect to the property thereby conveyed. This language is common to all the deeds. In each it describes the property conveyed as "all the following, present, and in future to be acquired property," &c.; that is to say, their road, made and to be made, including the right of way and the land occupied thereby, together with the superstructure, and tracks thereon, and all rails or materials used thereon, or procured therefor, inclusive of the iron rails purchased, or to be purchased or paid for with the above described bonds, or the money obtained therefor, and the machinery purchased with the same. In the construction of this language we must make a slight analysis of its phraseology. The deed does not propose to convey all the present and future to be acquired property, but only all the "*following* present and future to be acquired property." It then limits the description to such road as was then made, and as might thereafter be made, including the right of way, and the land thereby occupied—not the right of way thereafter to be acquired for such right of way. It covers all rails, and other materials then used on the road, and all that had then been procured for such use, "*inclusive*" of the iron rails then purchased, or to be purchased with the bonds secured thereby or money obtained for

such bonds, and the machinery purchased with the same, and bridges, viaducts, culverts, fences, depot grounds, and buildings thereon, engines, tenders, cars, tools, materials, machinery, and all other personal property, right thereto, or interest therein pertaining as aforesaid. Now it is obvious that the provision as to the bridges, viaducts, culverts, fences, depot grounds, and buildings thereon, engines, tenders, cars, tools, materials, machinery, and other personal property, is intended to apply to the property therein enumerated, then owned by the company; for machinery is included in a former provision as to property purchased or to be purchased with the bonds thereby secured, or the proceeds of such bonds. .

This being the contract of the Company with the holders of the bonds secured by the trust deeds of 1851 and 1852; such holders were fully notified that their security did not apply to after acquired property not purchased with their bonds, or the proceeds thereof. The limitation is carefully drawn and the distinction plainly defined by the language of the deed.

We are not contending that it was not competent for the Railroad Company to have embraced all future acquired property in its deed, for as it did not attempt to do so, no question of such right exists in the case.

In the case of *Pennock vs. Coe*, 23, Howard, 117, the trust deeds discussed are somewhat similar, in respect to the property conveyed, to the deeds now under discussion. The instruments differ however in some respects. For instance, the description in the present case confines itself to "All the *following*, present, and in future to be acquired property." In the case in 23 Howard referred to the description is of "All the present and future to be acquired property," omitting the word *following*. In the present case the deed is made to cover, "The iron rails purchased, or to be purchased with the bonds secured by the mortgage, or with money obtained therefor, and the *machinery purchased with the same*." In the case in 23 Howard, referred to, the italicized words do not occur. In the present case the "bridges, viaducts," &c., are described with the qualifying words, "All the other personal property, right thereto or interest therein *pertaining as aforesaid*." In the case in 23 Howard, referred to, the words "pertaining as aforesaid," do not occur.

Having thus traced the distinction, or difference of phraseology between the trust deeds in the present case, and those in *Pennock vs. Coe*, supra, we will take the liberty to refer to the opinion of the Court in the latter case.

The question in that case arose upon facts about as follows: A Railroad Compay in April, 1852, had executed a trust deed on all its present and future to be acquired property to secure an issue of bonds of the Company and had gone on and built and equipped its road, so that the road was entirely completed, and its whole rolling stock supplied as early as April, 1854. In November, 1854, the Company executed a second trust deed to secure another issue of bonds, containing a description of the property conveyed precisely as in the trust deed of April, 1852, *Coe* was the trustee named in both deeds, *Pennock*, the holder of some of the bonds secured by the deed of November, 1854, obtained a judgment on the bonds so held by him, and caused an execution to issue, and be levied on the Company's road. *Coe* filed his bill to enjoin the execution, and the injunction was granted, and the decree granting the injunction was affirmed.

In the opinion of the court, it will be observed that stress was laid on the fact that, in the use of the bonds secured by the first deed, the road had been entirely built and equipped prior to the issue of the second mortgage bonds. But in the form in which the question arose in that case, it was the obvious duty of the court to sustain the injunction, without reference to the question that arises in this case. There a holder of a portion of the bonds secured by the second deed of trust was seeking to avail himself of the whole security applicable to all the other holders of bonds secured by the same deed, by execution, to the exclusion of all other holders of like bonds, and in disregard of the rights acquired by the holders of the bonds secured by the first deed. In this his conduct was so plainly against equity, that without any reference to priorites, he ought to have been prevented.

Here we have a case in which it is admitted by the pleadings that the entire issue of bonds secured by the deeds of 1853 and 1855, was expended in supplying the road with its machinery and rolling stock, and this after all the bonds secured by the deeds of 1851 and 1852, had been expended, leaving the

deficiency to be supplied by the proceeds of the bonds of 1853 and 1855. It is not to be supposed that had the state of the facts in *Pennock vs. Coe* been precisely as in the present case, it would have been held by the Court, that the holders of the bonds secured by the second deed of trust were to be postponed, and those holding under the first deed should have exclusive priority, even under the phraseology of those deeds. We feel authorized to say this, in view of the explicit reference made more than once in the opinion, to the fact that the entire road had been built, and the whole of the rolling stock purchased before the second deed was executed. In this case we stand upon the contract contained in our deeds of trust, and in those of 1851 and 1852, and we insist that the holders under the last named deeds, by the very terms of those deeds, have no right to claim priority as to property purchased with our bonds.

The argument contained in the answer to the cross bill of the appellants, based upon the pleader's construction of the decree of December, 1858, comes with ill grace from parties who, by their conduct in endeavoring to escape the jurisdiction in which that decree was made, had ignored all its provisions, and who, in the face of the Court, attempted to wipe out the decree by a dismissal of the entire case, so that they might hold the whole property of the Company by virtue of authority claimed under a corporate organization resulting from a surreptitious proceeding in another jurisdiction. Howsdever the decree of December 1858 may have attempted to impair the rights of those who were not parties to it at the time, it ought not to be permitted that those who had been chiefly instrumental in procuring it, and then utterly disregarded its provisions should call those provisions to their aid to defeat the vested rights of those who had no participation in its adoption.

And this leads us to our fourth and final proposition, which, if the facts assumed are true, is self-evident, That the parties in whose sole behalf the decree was rendered, according to the pleadings and evidence, had, before the filing of the supplemental bill upon which the final decree rests, surrendered the bonds secured by the mortgages foreclosed in their behalf, in such form as to forfeit their standing in Court, and should therefore have been denied any relief by its final decree.

Is it true that such surrender had been made? Our answer

Supreme Court of the United States.

OCTOBER TERM, 1874.

Gideon Putnam and Stella C. Putnam (his wife,) John Savage Shaw, Laura W. Shaw, Laura H. Shaw, Frank E. Shaw, Gideon Shaw, Helen Shaw, James E. Emerson (Administrator of Charles N. Emerson, deceased,) Augusta J. Emerson (Administratrix of Edward B. Emerson, deceased,) Blanche V. Babcock, and Myron N. Babcock (her husband,) Henry W. Shaw and Avery Williams (impleaded in the Circuit Court with the Louisville, New Albany and Chicago Railroad Company, and the Louisville, New Albany and Chicago Railway Company,) APPELLANTS,

vs.

Charles E. Bill, Trustee, etc., APPELLEES.

APPEAL FROM THE CIRCUIT COURT FOR THE DISTRICT OF INDIANA.

Further Abstract and Statement of Points, under stipulation filed January 19, 1875.

Of the bonds secured by the several mortgages subsequent to that of 1852, the report of the Master shows that there are still outstanding:

Secured by that of 1853,	$286,712 40
" " " " 1855,	202,528 34
" " " " 1856,	222,906 32

(See Page 137.)

The amounts include interest to the time of taking the account.

It is also shown that of the bonds so outstanding, Putnam, one of the appellants, holds one of the series of 1855, amounting, interest included, to date of account, to $2,515.88, and Frank E. Shaw, Gideon Shaw and Helen Shaw, three of the appellants, together hold:

Bonds of 1853, interest included,	$20,127 04
" " 1855, " "	22,447 95
" " 1856, " " (income)	5,610 66

(See Page 137)

making a total held by four of the appellants, including interest to date of account, of $50,701 53

The following is the clause of the decree of December, 1858, which relates to the reservation as to the 10℔ and 8℔ mortgages:

"But the same is hereby declared to be subject in all things to a certain mortgage executed by the Crawfordsville and
72 Wabash Railroad Company, for one hundred and seventy-five thousand dollars, and assumed by said New Albany and Salem Railroad Company, the same being upon that part of said railroad between Lafayette and Crawfordsville, and subject to a certain other mortgage executed to said Douw D. Williamson, as Trustee, by said New Albany and Salem Railroad Company, upon one hundred and twelve miles of the south end of said road,

for 500,000 dollars, executed to secure the holders of ten per cent. bonds to that amount, subject to said last mentioned mortgage, the lien of which is to remain valid, and the principal of which is hereby decreed to be paid in ten years from the time when the said several bonds shall fall due, and subject, also, to a certain other mortgage executed to said Douw D. Williamson, as trustee, by said New Albany and Salem Railroad Company, for the sum of two million, three hundred and twenty five thousand dollars, (2,325,000,) executed to secure the holders of eight per cent. bonds to the said amount, the lien of which last mentioned mortgage is to remain valid and unimpaired, and the principal of which is decreed to be paid on the first day of May, eighteen hundred and seventy-five, and for the particulars of which last mentioned mortgages or deeds of trust reference is hereby made to the original mortgages or deeds of trust duly of record and now produced in this court; and the same is hereby further subject to the payment of all interest which shall accrue or grow due from time to time on the said last two mentioned deeds of trust, and upon the eight and ten per cent. bonds issued under said deeds of trust, or any one of them, from and after the first day of May, A. D. 1859, and for which interest new coupon sheets shall be issued, but not subject to a lien for the interest accruing on said eight and ten per cent. bonds previous to said first of May, 1859."

Final Decree of the Circuit Court.

The following is the language of the final decree as to the cross-bill of appellants:

"Now, on this 21st day of November, 1872, this cause
325 came on for final hearing on the amended supplemental bill of complaint filed herein on the 2d day of June, 1871, and the answer of the intervening defendants, John Savage Shaw and others, filed on September 4, 1871, the replication thereto, the default of the said railroad company, the report of the special master, filed March 25, 1872, and the depositions and evidence adduced, and at the same time the cross-bill of said John Savage Shaw and others, filed June 1, 1872, came on for final hearing upon the said cross-bill, the answer of the said complainant,

Charles E. Bill, thereto, the replication and proofs adduced; and the court having heard counsel thereupon, and being sufficiently advised in the premises, do now finally order, adjudge, and decree that the said cross-bill of said John Savage Shaw and others, filed on June 1, 1872, be, and the same is hereby, dismissed, absolutely, for want of equity, and that the complainant recover costs."

Testimony as to conversion of bonds of 1851 and 1852:

"Q. 33. What amount of capital stock was represented by the stockholders of the railway company in the aggregate?

A. About $3,000,000.

Q. 34. How was that stock paid into the company?

(Objected to as immaterial.)

A. It represented the railroad property.

Q. 35. Was any of derived by the stockholders, by the surrender of 10 per cent. and 8 per cent. bonds of the New Albany & Salem Railroad Company, and their conversion into the stock of the railroad company?

(Objected to as immaterial.)

A. I do not understand that any of the said bonds were surrendered to the railroad company, or that they were converted by the railroad company into their stock and thereby
383 canceled.

Q. 36. Was any dividend upon the stock of the railroad company paid to any holder thereof through your instrumentality under the direction of the transfer agency in New York?

A. There was.

Q. 37. Can you state to whom?

A. The transfer agency paid a dividend to Isaac Chase, of Salem, and to several parties at Bedford, through me.

Q. 38. How did those parties derive this stock?

(Objected to as immaterial.)

A. The stock was issued to them, as I understand it, upon the eight and ten per cent. bonds held by them.

Q. 39. What was done with the bonds that formed the basis of that stock?

A. They were delivered to the clerk of the White common pleas court.

Q. 40. How did you ascertain they were so delivered?

A. I sent them to him through Messrs. Chase & Wilstach, of Lafayette.

Q. 41. Please identify the letter-book now produced; what book is it, by whom kept, for what use?

A. It is an impression taken from letters sent by me from June 12th, 1869, to June 10th, 1870, as secretary and treasurer of the railroad company.

Q. 42. Turn to the impression of the letter beginning on page 23 and ending on page 24, and state in whose handwriting it appears to have been written?

(Objected to as immaterial.)

A. This is my handwriting.

Q. 43. Make a copy of the impression of that letter as an exhibit to your answer to this question, and state npon what information was it that you communicated to Mr. Malott, to whom that letter is addressed, the fact, that the gentlemen who purchased our road at the recent sale, and who were large bondholders, have organized a new company, which is now operating the property, and that they have paid the capital stock at $3,000,000 and have converted their bonds into it at the rate of $1.20 for the 10 per cent. and for the 8 per cents.

(Objected to because letter not produced or shown to exist, and that testimony is irrelevant and incompetent, and merely
384 copy of a copy.)

A. The following is a copy:

JUNE 13TH, 1869.

Mr. MALOTT, Esq., *Bedford, Ind.*

DEAR SIR: The gentlemen who purchased our road at the recent sale, and who were large bondholders, have organized a new company, which is now operating the property. They have fixed the capital stock at $3,000,000, and have converted their bonds into it at the rate of $1.20 for the ten per cent. and par for the eight per cents. They extend the same privilege to other holders who may accept it before August 1st, 1869. After that

date, bonds remaining out will be worth only their proportion of a $100,000, the amount for which the road was sold. If you wish to convert your bonds into stock in the new company, you can forward them to us, and I will send them with others to New York, where the new stock will be issued.

Yours, respectfully,

W. H. LEWIS, *Secretary.*

It was from consultation with Mr. George L. Schuyler as near as I can recollect. I should, perhaps, have used the word "exchange" for "converted." Further, I do not understand that any of the bonds were at any time surrendered to the railway company, there being nothing on the books of the company here or in New York to show any such surrender or conversion.

Q. 44. At about what time were the bonds, which your correspondence with Malott relates to, sent the clerk of the White common pleas court through Chase & Wilstach?

A. I do not remember.

Q. 45. On page 34 of the letter-book referred to, there appears the following copy of a letter:

JULY 24TH, 1869.

M. A. MALOTT, Esq., *Bedford, Ind.*

DEAR SIR: Your favor of the 23d inst. ordering ten per cent. bonds Nos. 264, 266 and 270, is received. The stock will be issued in New York at an early day, the certificates forwarded.

Yours, respectfully,

W. H. LEWIS, *Secretary.*

In conformity with the promise in that letter, did you procure the stock to be issued in New York in lieu of those bonds?

385 (Objected to as leading, and because original letter is not produced as immaterial.)

A. I sent the bond to the president of the Farmers' Loan and Trust Company, and he delivered them to the bondholders' association, and I presume stock was issued and sent to me for delivery.

Q. 46. The letter also copied from page 34 appears to be in your handwriting, does it not?

A. That is my writing.

Q. 47. In whose handwriting is the following letter found on page 65 of the letter-book referred to?

(Objected to.)

A. It is mine, and reads as follows:

AUGUST 2D, 1869.

M. A. MALOTT, Esp., *Bedford, Ind.*

DEAR SIR: Enclosed I hand you certificates of stock in this company, as below:

No. 100, A. J. Williams, trustee..... 12 shares.
No. 5, A. J. Williams, trustee..... $50.
No. 101, T. C. Williams, trustee..... 12 shares.
No. 16, T. C. Williams, trustee..... $50 script.
No. 102, E. D. Pearson, trustee ..... 12 shares.
No. 17, E. D. Pearson, trustee .... $50 script.

As you will notice, $125 in stock has been issued for each $100 in bonds surrendered, which we think a very favorable arrangement for the holders. Please acknowledge the receipt of the certificates. Yours, truly,

W. H. LEWIS, *Secretary.*

Q. 48. Look at the two instruments now placed in your hands and mark them as exhibits in your answer to this interrogatory, and state whether the instrument numbered 102 is a certificate of stock referred to in the letter copied on page 66 of the letter-book, and also whether the instrument numbered 17 is one of the instruments referred to in that letter.

(Objected to as immaterial.)

A. I have looked at them, and now mark them "A" and "B," and make them a part of my answer. They are the papers referred to in said letter-book.

386 Q. 49. What do the two exhibits accompanying your last answer represent and stand in lieu of?

(Objected to.)

A. They represent full shares fractional stock with Louisville, New Albany & Chicago Railway Company. I don't know what you mean by the words "standing in lieu of."

Q. 50. Were not those two papers made exhibits with answer 48 forwarded to Mr. Malott in exchange for a ten per cent. bond of $1,000.

A. Yes; I suppose they were.

Q. 51. State, if you know, how many of the ten per cent. and eight per cent. bonds were treated as the bonds enclosed to you by Mr. Malott?

(Objected to as immaterial.)

A. I do not know.

Q. 52. In your answer to the 25th interrogatory in-chief, you state that five hundred of the mortgage bonds of the series of February 8th, 1858, commonly called the ten per cent. bonds of the said railroad, are now outstanding, and in your answer to the 25th interrogatory-in-chief, you state that $2,311,000 of the eight per cent. mortgage bonds are outstanding; do you include in these statements the bonds referred to that have been treated as were those bonds forwarded by you to Mr. Malott?

A. (Objected to as embodying a material fact, and immaterial.)

A. Yes; it includes all.

Direct examination renewed:

Q. 1. In your answer to the 38th cross-interrogatory, as to how the parties derived their stock, you say that the stock was issued on the basis of the eight per cent. bonds held by them; Please explain what you mean by that?

(Objected to and exception taken.)

A. The road was sold by decree of the White common pleas court, and bought by Schuyler for the association of the bondholders for $100,000. A company was formed called the Railway Company, with a capital of three million dollars, and the stock given to bondholders of the eight and ten per cents. in proportion to the amount of bonds held by them.

Q. How was it as to the Malott bonds, and all others not included in those held by the bondholders' association. Was any other or different arrangement made as theirs?

387 (Objected to and exceptions taken.)

A. They were allowed the same privilege after the bonds were surrendered to the White common pleas court in the same manner. I mean nothing more than that they had the same privilege with the other holders of the eight and ten per cent. bonds. The bonds were placed in the custody of the White common pleas court upon the supposition that the sale was valid.

W. H. LEWIS.

A. —This is the "Exhibit A" referred to by witness Lewis, and made a part of his 48th answer.

JOHN H. STOTSENBURG,
Notary Public.

No. 102.] Shares $100 each. [12 shares.

THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILROAD COMPANY.

OFFICE OF THE FARMERS' LOAN AND TRUST COMPANY,
TRANSFER AGENTS IN NEW YORK.

By virtue of warrant to this agency, we hereby certify that E. D. Pearson, trustee for G. A. Thomas' heirs, Bedford, Indiana, is entitled to twelve shares in the capital stock of the Louisville, New Albany and Chicago Railway Company, transferable only on the books at the transfer office, in the city of New York, in person or by attorney, upon the surrender of this certificate.

In witness whereof, we, the Farmers' Loan and Trust Company, by our president and secretary, have hereunto affixed our signatures, at New York, this 29th day of July, 1869.

R. J. ROLSTON, *Pres't*

GEO. P. FITCH, *Sec'y.*

B.—This is "Exhibit B" referred to by witness Lewis, and made a part of his 48th answer.

Fractional Certificate.

THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY.

OFFICE OF FARMERS LOAN AND TRUST COMPANY,
TRANSFER AGENTS,
New York, July 29, 1869.

This is to certify that E. D. Pearson, Trustee for G. A. Thornton's heirs, is entitled to a fractional part of a share of stock in this Company, amounting to fifty dollars.

Upon the surrender of this certificate at this office, with others of like tenor, amounting in the aggregate to one hundred dollars, a share of stock will be issued therefor.

R. G. ROLSTON, *Pres't.*

As to the property covered by the several trust deeds, see recitals of original bill, pages 2, 6, 8, 10 and 11. Also the statement in deposition of Mahan, accompanying Master's report, pages 166, 167, 168 and 169. See also averments of cross-bill and the answer thereto, already referred to.

Points Restated.

I.

The decree against the Louisville, New Albany and Chicago Railroad Company is erroneous, because it appears that said company was defaulted at the instance of counsel who had theretofore appeared specially for said company, and no process of subpœna

was afterwards taken out upon the supplemental bill against the said company before such default, nor at any time thereafter before final decree.

II.

The supplemental bill of complaint upon which the final decree is founded shows upon its face that the complainant trustee, and those in whose behalf he prosecuted said bill, are not entitled to the relief prayed, nor to any relief whatever.

III.

In the final decree of the Circuit Court the provisions contained in the several mortgages as to the property covered by them respectively, is wholly disregarded by the court in this, to-wit:

1st. The mortgage of 1851, being the first of the series, by its express terms limits operations as to future acquired property of the company to such as may be purchased with the bonds thereby secured, or with money obtained therefor.

2d. The mortgages of 1852, being the second of the series, by its express terms limits its operations as to future acquired property of the company to such as may be purchased with the bonds secured thereby, or with money obtained therefor.

3d. The mortgages of 1853 and 1855, being the third and the fourth of the series, pledged as security for the payment of the bonds by them respectively secured, the property that might be purchased with such bonds, or with money obtained therefor.

Whereas, by the final decree of the Circuit Court the mortgages of 1851 and 1852 are held to cover all the property of the company, whether acquired by purchase with the bonds secured by the subsequent mortgages or with money obtained for such latter bonds, or otherwise.

IV.

The parties in whose sole behalf the decree was rendered, according to the pleadings and evidence, had, before the filing of the supplemental bill upon which the final decree rests, surrendered the bonds secured by the mortgages foreclosed in their behalf, in such form as to forfeit their standing in the court, and should therefore have been denied any relief by its final decree.

Additional Point.

V.

The appellants, by their cross-bill, under the evidence and according to the uncontroverted facts charged in said cross-bill, were entitled to relief; whereas, by the final decree of the Circuit Court, their cross bill was dismissed for want of equity.

S. A. Huff,
J. E. McDonald,
Attys for appellants.

Supreme Court of the United States.

GIDEON PUTNAM, JOHN SHAW, AND OTHERS,
Appellants,

VS.

CHARLES E. BILL, Trustee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

Statement and Argument for Appellee.

HENRY CRAWFORD,
Solicitor.

SUPREME COURT OF THE UNITED STATES.

No. 147.

GIDEON PUTNAM, JOHN S. SHAW, *et al.*,
Appellants.

vs.

CHARLES E. BILL, TRUSTEE, ETC.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

ARGUMENT FOR APPELLEES.

The New Albany & Salem Railroad was chartered by the State of Indiana, with power to construct a line of railway from New Albany, on the Ohio River, to Michigan City, on Lake Michigan.

Afterwards the corporate name was changed to the Louisville, New Albany & Chicago Railroad Company.

During the process of construction, the corporation effected several loans of money for its corporate uses, all which were evidenced by the usual railway bonds, secured by mortgages either upon the whole line or some portion thereof.

The mortgages were five in number. The first bears date February 8, 1851, and covers that portion of the railway line and its appendages between New Albany and Gosport, about 113 miles.

This mortgage was executed to secure $500,000 ten per cent. bonds.

The second mortgage was executed February 14, 1852, on the entire line, from New Albany to Michigan City, together with all personal property and franchises, to secure an issue of $2,325,000 bonds, bearing eight per cent. interest.

The third encumbrance is dated November 3, 1853. It rested on the whole line, as security for $1,000,000 seven per cent. bonds.

The fourth mortgage of February 1, 1855, secured another issue of similar amount, and was an encumbrance on the whole line.

The fifth, December 21, 1855, was a mortgage only of the personal property to secure $500,000 of ten per cent. income bonds.

All of these different conveyances were properly executed, acknowledged and recorded.

Question is made as to the proper construction of certain of the provisions of the first two, but no point is made as to their entire validity.

In all these mortgages, Douw D. Williamson, the original complainant below, was Trustee for the bond creditors, and Charles E. Bill was alternate.

The corporation defaulted in the payment of interest on its different bonded obligations in 1857, and at the August rules of the Circuit Court of that year, Williamson filed a bill praying an ordinary decree of foreclosure of the several mortgages. The corporation was duly served with process of subpoena (Record p. 17) and appeared and demurred. (Record p. 18.)

A motion for the appointment of a receiver was argued before the late Justice McLean, at Chambers, on November 2, 1857, and was denied without prejudice. (Record p. 19.)

On June 12, 1858, the bond creditors waiving the priority on the railway property and its income to which they were undoubtedly entitled, consented to an interlocutory decree in the cause, authorizing Williamson as Trustee to borrow $200,000, to discharge certain debts due to operatives and acceptances endorsed by the directors, and to hold possession of the railroad property until such special loan had been fully repaid with interest out of the income of the road, in preference to any interest on the bonds. When repayment was made, surrender was to be made directly to the corporation, without any order of Court. (Record p. 47.)

On December 16, 1858, (Record p. 48,) a decree was enrolled, not in the ordinary course of equity practice. The corporation had not filed any answer, no issue of any kind had been formulated, no evidence taken or hearing had. It was a decree *consensus partium*, not representing the judgment of the Court on any matter in the controversy.

It had its origin in the "Basis of Adjustment" (p. 39) tendered by the corporation to its creditors.

It will be seen that the decree declares itself however an absolute and final decree, "embracing, determining and concluding all interests under the several mortgages or deeds of trust, and in the capital stock of the company." (P. 48.)

By its terms, the last three of the mortgages are declared extinguished as liens and the bonds are declared convertible into the common stock of the reorganized corporation, and all such junior bondholders are ordered to surrender their bonds, and are specifically enjoined from enforcing any claim or interest they may have in any of said bonds in any other mode than as provided, and shall not be entitled to any dividend or interest, until such bonds are surrendered. (Record p. 51.)

The only bonds or mortgages executed by the corporation which were left alive by this decree, were those of February 8, 1851, and February 14, 1852, the liens of which were declared to be valid and unimpaired, and the net income of the property was ordered to be applied first to the payment of the interest on these two encumbrances, which might fall due after May 1, 1859. (Record p. 51.)

It appears by the averments of the supplemental bill (p. 112) that the special loan of $200,000 was fully repaid in April, 1864. This date is fixed by the testimony of Talman (p. 235, Int. 11), and is wholly uncontradicted.

During the period from the entry of the above stated final decree in 1858 to April, 1864, the entire interest on the $1,825,000 of bonded debt was unpaid, amounting to $1,416,000.

The company was insolvent, and the mortgaged property was confessedly worth not half the debt for which it was pledged.

Under the conditions of the trust deeds (pp. 3 and 6) the trustee, in case of default, was authorized on request of the bondholders to take possession of the property and operate it. This demand in 1864 is alleged and proven. (Talman's test, p. 235, Int. 13.) During the period from 1864 to 1868, when Williamson as mortgagee in possession was operating the road, the sum of $466,100 was realized from net earnings, and applied by him to retire coupons for two years.

It is to be specially noted that this sum of $466,100 is the entire sum received by the first mortgage bondholders from 1857 to 1868.

In August, 1868, a demand was made by nearly the entire body of bondholders, that the trustee should institute proceedings to foreclose the mortgages, and sell the railroad property.

The demand was general, with no requirement or suggestion as to the particular court wherein the foreclosure should be had. The trustee's counsel, acting upon the theory that the decree of December 16, 1858, was a final one, and that an entirely new action would have to be instituted, brought suit in a State court of plenary common law and chancery jurisdiction, praying foreclosure and sale. This action was begun September 4, 1868, James F. Joy appointed Receiver, September 22. On January 23, 1869, a decree of sale was entered, the line of railway and appurtenances was sold on May 4, 1869, and after confirmation the deed of conveyance was executed May 28, 1867, to the purchasers, being seven of the first mortgage bondholders in trust for all. (Record p. 370.) The purchasers, as thereto empowered by the laws of Indiana, organized a new corporation called the Louisville, New Albany & Chicago Railway Company, and held possession of the railway and received the income continuously from May, 1869, until the decree entered November 29, 1870, in this cause, (Record p. 98) when George H. Chapman was appointed Receiver, and ordered to dispossess the *Railway Company* from its purchase.

This last named order was procured on the motion of the appellant, John S. Shaw, who filed a petition August 29, 1870, purporting to be at the foot of the decree of December 16, 1858, (p. 81), stating he held *one bond of the fourth mortgage issue* and was also a holder of some of the stock of the company, issued on bonds surrendered under the final decree of December 16, 1858. The contention of his petition was, that in truth that decree was not a final one, that the cause was still pending, and by virtue of the two decrees of June and December, 1858, the railway property had been brought into the wardship exclusively of the Circuit Court of the United States, so that the foreclosure proceedings in the State Court were without jurisdiction and void; the first mortgage bond creditors of a hopelessly insolvent corporation, who had waited ten years for their interest money, "a band of conspirators;" the trustee a "tool," and the *Railway Company* organized on the State court's deed was a "pretended organization," and a "usurpation."

The petition also charged that there had been gross and fraudulent misappropriation of the revenues of the road by Williamson, Joy the Receiver and the Railway Company, and prayed an account of the entire receipts and disbursements from June, 1858 to November, 1870.

This was ordered in the decree appointing a receiver. (p. 102.)

This decree not only made an appointment, but assumed to decide the title to the property, annulled the entire State Court decree and sale, and ordered the *Railway Company*, the trustee and all bondholders to deliver up instant possession of all the property they claimed, to the Receiver of the Federal Court, under penalty of attachment. (p. 99.)

From this decree an appeal was prayed, and bond tendered in due season to operate as a supersedeas. (p. 103). The bond on appeal was approved in penalty of $100,000, on December 10, 1876, (p. 104). Notwithstanding the allowance of an appeal and approval of the bond by the Circuit Judge who had appointed the receiver, which appeal suspended the operation of the order directing the dispossession of the Railway Company, Talman and others, the District Judge moved by an affidavit of the receiver on December 14, 1870, ordered attachments and writs of assistance against those who remained in possession of the property as entitled by the appeal. (Record, p. 103.)

Thus dispoiled of their possession and practically prevented from the exercise and benefit of an appeal to this court, the bond creditors who composed the Railway Company were compelled to submit to a hostile receivership of property on which they held (even if the State Court proceedings were invalid) an admitted prior lien of $6,000,000, *on the petition of a holder of one worthless fourth mortgage bond, and a few shares of still more worthless common stock.* The whole range of judicial procedure fails to disclose a single precedent for so cruel and unnecessary exercise of the discretionary power of a Court of Chancery to appoint a receiver.

Having procured this sequestration of property and order for an account in November, 1870, the best efforts of the interveners were directed to the task of delaying final action and continuing the receivership as long as possible.

Required by the equity rules to proceed in the master's office prior to the next rule day on the order for an accounting, the intervenors did nothing whatever, and the appellees were compelled on March 14, 1871, to procure an order on them to speed the cause, (page 106).

On the entire hearing before the master on the reference which had been procured by the appellants on their charges of fraud, the only witnesses offered by them were Foster, Lyman, Pearson and Putnam, whose testimony was meagre and utterly inconsequential. (Record, pp. 107, 108, 153, 156, 165.)

The master's report being filed March 25, 1872, (page 134) no exceptions were filed to it by the appellants within the time required by the rules, and it stood and stands confirmed, as, of course. June 24, 1872, exceptions were tendered (page 222) which were struck from the files (page 228) and the appellants acquiesce in the correctness of such ruling, as *no error is assigned on such disposition of their exceptions, nor is any question made or argued as to the entire sufficiency and conclusiveness of the master's report.*

After the decision on the motion for a receiver to the effect that this cause was still pending, and the railroad corporation and its property still in the exclusive jurisdiction of the court below, the trustee on leave filed his supplemental bill, praying a foreclosure of the mortgages of 1851 and 1852, alleging the hopeless insolvency of the corporation, and that the proceedings in the State Court had been prosecuted in good faith and under advice of counsel that the action in the Federal Court had been ended by a final decree.

Shaw interposed a demurrer which was overruled. His answer to supplemental bill filed September 4, 1871, (page 120) is a mere reiteration of the indefinite charges of fraud, contempt of jurisdiction, and *consequent forfeiture of property rights* which are found in the original intervening petition.

Replication was filed to this answer October 3, 1871, (Record, page 130).

On October 27, 1871, the trustee complainant proceeded to take the depositions of witnesses to support the issues in the original and

amended supplemental bill. Such depositions were filed November 6, 1871, (p. 232).

Three months allowed by the equity rule for the taking of testimony expired.

The appellants took no testimony whatever and made no motion for any extension of time to enable them to do so, nor was the three months limit allowed by the rules ever enlarged in any manner.

Clearly, with issues closed, a special master's report embracing all controverted issues on file March 25, 1872, the complainant and bond creditors were entitled to a trial of the cause at the May Term, 1872.

But on motion made May 7, (p. 181), to set the cause down for hearing, the appellants who had offered no pertinent testimony before the master, and had not produced a single witness for the general hearing, asked *to stay proceedings to enable them to file a cross-bill* (p. 181).

This cross-bill appears at length (p. 199). It is almost a literal copy of the original petition and the answer to the supplemental bill of the trustee, and all its vehement allegations of fraud and misapplication of funds were embraced in and proven false by the master's report, *which stood approved and conclusive under the rules at the very time when this cross-bill was first tendered.*

Over the objections of the appellees leave was given however, to file the cross-bill, and the cause was set down for final hearing at the November Term on both supplemental and cross-bill (p. 182).

This filing was upon terms that the cross-complainants should take their testimony under it by September 1. To show the intentional bad faith with which this pleading was filed and six months delay thus procured, it is sufficient to state that the appellants never took or tried to take any testimony whatever under the leave, *and the case was finally heard on exactly the same testimony which was on the files of the court when the cross-bill was filed, viz: the depositions of Fitch, Lewis, Talman and Schuyler, and the confirmed master's report. The appellants introduced no testimony whatever save the cross-examination of the trustees' witnesses, made prior to filing the cross-bill, and in this Court no error whatever is assigned upon the action of the Court dismissing the cross-bill for want of equity in such compliance with the rules as to present any question for review.*

The final decree enrolled November 21, 1872, is framed in accordance with the facts found by the master's report, fixing the lien of the 10 per cent. mortgage at $1,196,868, and that of the 8 per cent. mortgage at $4,932,000, (p. 229).

It finds the corporation insolvent, and the mortgaged property entirely inadequate to pay the incumbrance, and orders a sale of all the property to satisfy the sums so adjudged to be due.

The cross-bill of Shaw and others filed June 1, 1872, is dismissed for want of equity.

The appeal taken to this court by the intervenors was prayed *without supersedeas*, on filing bond merely to answer costs, (p. 231).

I.

The first error assigned by counsel is, that the decree against the Louisville, New Albany & Chicago Railroad Company is erroneous, and the reasons urged in support of the assignment are (1) "that the corporation was defaulted at the instance of counsel, who had therefore appeared specially for said company," and (2), because no process of subpoena was served on the company before such default, or before the final decree.

Now, even were it true, that the court below proceeded irregularly in the default and decree against the corporation, it is quite clear upon principle and manifold authority that the present appellants have no standing on this appeal to complain of such action.

The corporation is a separate person in fact and law from these appellants. It did not appeal, and does not join in any assignment of error. The supplemental bill was taken *pro confesso* on Aug. 7, 1871, (Record, p. 120), for failure to plead answer or demur in compliance with the order of the court to plead by June 12, 1871. (P. 116).

No exception was taken by the appellants to the action of the court when the supplemental bill was ordered to be taken as confessed.

The rule in ordinary cases is well settled, that one party to the record cannot insist upon even a conceded erroneous ruling made solely against another co-litigant, because it does not in any manner prejudice his rights.

An effort is, however, feebly made in the brief to treat this appeal as an exception to the general principle above stated.

It is said "the appellants have interests involved which it was the duty of the corporation to guard," and for that reason they ought to be permitted to ask a review of the action of the Circuit Court.

Considering the fact, that in the original petition, Shaw claimed the right to appear upon the record as a party, in order to protect his own interests, and that this was so ordered (Record, p. 98), and that for two years he and his co-appellants were the only adversary parties in these proceedings, and demurred and answered in their own behalf, it is a most remarkable pretence now to make that it was the duty of the corporation to guard their interests, especially when the answer of these very parties to the supplemental bill, (p. 121), "deny that such corporation has now any power or existence, except as a ward of this court, under and by virtue of the decree and decretal orders heretofore made in this cause," and aver by their cross-bill (p. 209), that they ought to be allowed to litigate in their own name and right, because there is no board of directors, or authorized officers of the corporation to seek relief in their behalf.

The statement of the brief that the appellants "have interests involved which it was the duty of the corporation to guard," is also wholly unfounded in the testimony.

Divers of the appellants did aver ownership of stock in the corporation, (p. 151) but there was an utter lack of proof of any such ownership.

Shaw, the original intervenor, who had procured the appointment of a receiver, upon the ground that his interests as bondholder and stockholder of the corporation were being imperilled, did not prove either before the master or on final hearing that he held either bonds or stock.

The only testimony of any kind in the entire record, was that of Putnam before the master on the reference, (p. 165) and this was so found by the master. (P. 137.)

Putnam established the ownership of 1 bond of the series Nov. 3, 1855, in himself and in Frank E. Gideon and Helen Shaw, 20 others

of the third, fourth and fifth series. It is not easy to apprehend how it was the business of the corporation to intervene and guard these 21 bonds. The holders claimed to be creditors of and hostile to the corporation, and filed a cross-bill praying relief in their own behalf.

Even if they have been mere stockholders, the limitations under which they would stand upon the record have been well defined in *Bronson* v. *LaCrosse R. R.*, 2 Wall 283. Their defense is wholly independent of the corporation. The stockholder admitted under exceptional circumstances to defend an action brought against his corporation, becomes a substantial party to the extent of his own interests, and no further. The first ground of error therefore being charged to be in the action of the court against an independent litigant, and not the appellants, cannot be regarded on the authority of the case just cited. Considering this portion of the record on the merits and the action of the court was entirely regular. The proposition is stated as though the only jurisdiction which the court obtained over the corporation to enroll decree, was by the special appearance of counsel to the supplemental bill and then a withdrawal of such appearance. The corporation was brought into court on the original bill, by due service of process. (Record, p. 17.) The jurisdiction of the court attached on that service, and the contention of the appellants has constantly been that its jurisdiction over the corporation and its property has ever since been continuous and exclusive.

It is said that no process was served on the corporation to answer to the supplemental bill. That was never required according to ordinary chancery practice, and is not necessary to compel answer to such a pleading, under the 57th Equity rule.

The supplemental bill is a mere adjunct of the original and both are heard together upon the same evidence. There need be but one subpoena in the cause.

The pith of this objection is that the court below had no jurisdiction over the person of the corporation, to decree the matter of the supplemental bill without the service of new process. Taking into view the salient facts of the record, this is a most remarkable and audacious position to assume.

In 1870, on a *mere notice to counsel*, appellants procure a receivership of the entire property of the corporation, upon the ground as stated in the order of appointment that this case was pending, and the corporate property franchises and appurtenances had been so placed in 1858, "and are still within the jurisdiction and custody of this court," and that a receiver should be appointed, so that all parties in interest might have opportunities to have their legal rights, equities and priorities adjusted and decreed by the court. (Record, p. 98).

If the Court had jurisdiction to appoint a receiver, it is quite unnecessary to cite authority or elaborate any argument to sustain the doctrine that it held possession to administer the equities of all persons interested, and that according to equity practice any creditor having liens upon the property might have them adjusted and decreed even summarily, on filing a petition *pro interesse suo*.

II.

It is next objected that the appellant's demurrer to the supplemental bill should have been maintained, (1) because it did not aver a demand of the bonds at the place where payable.

The demurrer of Shaw was special, and points out no such ground. (P. 116.)

The question of demand at the place of payment only touches the question of cost, not the existence of the debt or the right of action.

The fact of the utter insolvency of the corporation is alleged and admitted in the answer, and the authorities are many and decided upon the proposition that insolvency and the failure to have the funds to meet the interest at the place of payment, excuse the necessity of a demand which would be fruitless.

It is also to be stated, in this connection, that the conditions of the mortages are not correctly cited in the brief. They do not require demand made at the place where payable, nor allow sixty days after such demand, before right of action accrues. The trustee is authorized to enter into possession of the trust property, only when sixty days

shall have elapsed after a default in payment of interest; but there is no restriction whatever on the general power of trustee or bond-holder to institute an ordinary foreclosure proceeding.

The next proposition stated in support of the demurrer to the supplemental bill is because the trustee filed the bill in the interest solely of the two senior mortgages, and not of the remainder.

There is no pretence that any such junior bondholders had made any demand upon the trustee to take any action for their benefit; and in view of the fact that by the decree of Dec. 16, 1858, all of these three junior encumbrances were declared to be extinguished, there was no obligation upon the trustee to initiate any such action.

These appellants had been allowed to become parties to protect their own interest, and no act or omission of the trustee could or did prejudice them.

III.

It is insisted the Circuit Court committed error in decreeing the mortgages of 1851 and 1852, covered all the property of the Company in existence at the date of the final decree.

It is not claimed that the corporation did not have power to embrace by apt words after acquired property in the scope of a mortgage conveyance, but that by the terms of such indentures, there was a clear limitation of the lien to such future acquired property as might be purchased with the particular bonds of that issue, or the money procured therefor.

In the discussion of the terms of these conveyances, on pages 16 and 17, the argument is essentially an unfair one, because it is based upon only a garbled extract from the mortgages.

And it is also a gross and manifest perversion of the record and testimony, to state that it is admitted the entire issue of bonds secured by the mortgages of 1853 and 1855 were used in buying machinery, (p. 18) and that the question therefore is, " Are the mortgages of 1851 and 1852, by their terms, liens on after-acquired property, *purchased with bonds secured by the mortgages of* 1853 *and* 1855 *?*" (Pp. 14-19.)

This issue arises on the supplemental bill. It avers (p. 14) that nearly the entire equipment then in use had been purchased or rebuilt since 1858, out of the earnings of the railroad, and in no other manner whatever.

And the answer of the appellants thereto in dealing with this allegation, says (p. 129):

"These defendants are ignorant as to whether nearly the entire equipment and rolling stock and machinery in use upon said line of road had been either purchased since 1858, or that the equipment, rolling stock and machinery in use prior to the year 1858, have been substantially rebuilt, and that the money for such purchase and renewals has been realized by the operation of the said line of railroad, and has been paid out of its earnings; and the facts as to this allegation can only be fully ascertained so as to be known to those defendants by the examination now being made by the master."

Such was the issue. It will be said that there is no pretense in this answer that there is any property not covered by the early mortgages, or that any portion of the existing machinery was purchased by the bonds of the issues of 1853, 1855 and 1856.

In the statement of facts made before the master on the reference, the appellants did not announce any purpose to establish the purchase of the then existing equipment of the road with the bonds of the three later issues, or the money procured therefor. (P. 151.)

Nor was there in any part of the record any averment or evidence which established any such fact as that now assumed in the argument, (p. 19) that the first mortgage bondholders are claiming priority as to property purchased with appellant's bonds.

The only witness testifying to the point was Lewis. (P. 262, Int. 37.) He says:

"The equipment, rolling stock and machinery, principally, has been purchased and virtually rebuilt since 1858, out of the earnings of the road."

This evidence in support of the averments of the supplemental bill remains wholly unchallenged.

Mahon says (p. 168) it was impossible to tell from the accounts whether any or what iron rails and machinery were even originally purchased, with any of the bonds of 1853, 1855 and 1856.

The issue on this question is not at all that stated by counsel on page 14, of the argument, but is this; do the two eldest trust conveyances embrace the machinery and equipment used on the railway line at the time of final decree, purchased or rebuilt out of the income of the road? While the last portion of the statement accords with the proven facts, it is not of any special relevancy on the question whether the lien exists.

In the absence of restrictive legislation, it is not an open question in this and other courts, that by such description as that of these two mortgages all after-acquired engines and cars are bound.

An extract from a circular of President Brooks, which was never introduced in evidence, is relied on in the brief, to show that the restrictive construction contended for by them was so understood when the bonds were originally negotiated. It is rather unusual practice to quote the opinion of a business man to settle a question of legal construction, but if quoted the extract ought to be a fair one, which this is not.

In 1857, when the report cited was issued, the legal effect of railway mortgages had not been made a matter of explicit decision and the profession was then in doubt as to what the true construction of such instruments would be, and so Mr. Brooks wrote

"Under the laws of Indiana, no individual or company can mortgage property which they do not at the time own."

This statement immediately precedes and furnishes the sole foundation for the language quoted in the brief.

The after acquired equipment of the corporation, however acquired, is included in several of the terms of description in the first and second mortgages.

First. Under the description "their road made, or to be made, including the right of way and land occupied thereby, together with the superstructure and tracks thereon, and all rails and *other materials used thereon or procured therefor.*"

It was decided in Hunt v. Bullock, 23 Ill., 327, that, according to common law rules, the rolling stock and materials used for the repair

of the track, such as rails, ties, spikes, &c., whenever acquired, became permanent fixtures, and a mortgage of "the road and its tracks and franchises" includes such articles as chattels real.

To the same effect is *Palmer* v. *Forbes*, 23 *Ill.*, 301.

In *Coe* v. *McBrown*, 22 *Ind.*, 252, it was decided that wood, whenever purchased and stored beside the track, became bound by the lien of a mortgage which conveyed the road "and materials used thereon."

So engines and cars purchased subsequently to a mortgage binding "the road and appendages, and all improvements made upon such property, and additions to the same," are held by the encumbrance.

Howe v. Freeman, 14 Gray, 566.

The Supreme Court of N. H., in Pierce v. Emery, 32 N. H., 484, treat engines and cars as an accession to the original thing mortgaged, and this is so ruled also in the Court of Appeals of Ky., in Phillips v. Winslow, 18 B. Mon., 431.

Under the description of the "road, property, rights, liberties and franchises," engines, whenever purchased, pass at once under the lien.

P., W. & B. R. R. v. Woelppes, 64 Penn., 366.

This doctrine stands as approved in this court by the text of the following cases:

Coe v. *Pennock*, 23 *How*, 117.
Dunham v. *Railway Co.*, 1 *Wall*, 255.
R. R. Co. v. *James*, 6 *Wall*, 750.
Galveston R. R. v. *Cowdrey*, 11 *Wall*, 482.
Wilmington R. R. v. *Reid*, 13 *Wall*, 267.

Second. Under the description, "all the following then present and in the future to be acquired property of the said company, that is to say: their road made and to be made, including, &c., * * * *engines, tenders, cars, tools, materials, machinery,*" the equipment about which controversy is now raised would be specifically included under either of the three classes. It is said that these provisions are to be construed to apply only to the specially enumerated property then owned by the company. (Brief, p. 17.) But the mortgage distinctly says, "all the future to be acquired property" of any of the classes

enumerated, and is not to be restricted as against unequivocal language. This construction is easily refuted by noting that "bridges, viaducts, culverts, fences, depot grounds and buildings thereon," all which fall unquestionably under the head of realty, cannot consistently, with any principle or decision, be held to refer only to what the corporation then owned. Obviously, on the principle *noscitur a sociis*, the remaining specifications in the same sentence are equally intended to embrace all property to be acquired in future.

Third. If none of the general or specific descriptions before noted would serve to pass this character of after acquired-property, it would most assuredly be conveyed under the general and most comprehensive grant of

"And *all other peosonal property, right thereto, or interest therein*, pertaining as aforesaid, together with the tolls, rents or income to be had or levied therefrom." (P. 2).

Rolling stock is embraced in the general term "property" *Wilmington R. R.* v. *Reid*, 13 Wall, 267.

In the pledge of income and tolls it has been held that everything is encumbered which is necessary for the production of such revenue, or which has been purchased by it.

State vs. *North & R. R.*, 18 Md., 193.
Coe vs. *C. P. & I. R. R.*, 10 Ohio, 5,372.
Coe vs. *Pennock*, 14 Ohio 5, 187.
Jortin vs. *So. East R. R.*, 31 E. L. & E., 320.
Pullan vs. *N. & R. R. R.*, per Drummond J. in U. S. Circuit Court for Indiana.

This is the doctrine of the civil law on the principle, for says *Domat*, 649, Art. 5:

"Although the mortgage be restrained to certain things, yet it will nevertheless extend to all that shall arise or proceed from that thing which is mortgaged, or that shall augument or make part of it."

This equitable doctrine becomes applicable in view of the proven allegations of the supplemental bill, that the present stock of equipment has been purchased, or substantially rebuilt out of the net rev-

enues of the road, which were both by the mortgages as well as by the judicial decree of December 16, 1858, primarily appropriated to the payment of the interest on these two classes of obligations.

It would be a most extraordinary doctrine to enforce in chancery, that the bond creditors having this priority must suffer this appropriation of the trust fund pledged to them and yet have no lien upon or recourse to the specific property purchased with the funds.

That construction is also inconsistent with the ordinary business judgment, and known commercial dealing which holds that bond creditors would lend money on thirty year bonds, for the purchase of equipment, which could only last one-third of that time, and yet knowingly restrict their security to the identical machinery purchased with the money they advanced.

Yet that is the most improbable construction sought to be placed on the trust deeds in this record.

The attempted distinction drawn between the case of Pennock v. Coe, 23 How. 117, and the indenture in this cause, is shadowy and hypercritical.

The attempt to create *a limitation* on the grants in consequence of the use of the words "inclusive of the iron, rails, &c., and the machinery purchased with the same," is most audacious logic.

The very words "inclusive of" a certain class shows that there is a more comprehensive grant.

It is simply absurd to say that "inclusive of" is equivalent to the exclusion of everything else.

The whole contention on this construction is readily shown to be unfounded. The argument of counsel is directed to the equipment only. Why not equally restrict the conveyance to the "iron rails purchased with the bonds, &c." This is part of the sentence preceded by the words "inclusive of," on which so much point is made. As applied to iron rails laid on the track at any time, the construction is not worthy of serious consideration, and upon identically the same ground,

the construction as to the remaining portion of the sentence must be condemned.

The whole object of this language, which is quite common in railway mortgages, is clear. It was intended to bring within the scope of the mortgage, all rails and machinery immediately upon their purchase in distant States, and before they had been laid in or placed upon the track, when they would unquestionably be bound under the other descriptive clauses as appurtenant to the line of road.

IV.

Neither the original fourth or the additional assignment of error, are so stated or argued as to present any question for the Court to determine, under its rule, and the decisions—

Lucas v. *Brooks*, 18 *Wall*, 436.
Ryan v. *Coek*, 17 *Wall*, 19.
Portland Co. v. *U. S.*, 15 *Wall*, 11.
Deitch v. *Wiggins*, 15 *Wall*, 540.

Assigning certain action of the court below as error, and referring for support "to the record to which in respect to this point we have endeavored to direct the attention of the Court." (Brief, p. 20) is a proposition which hardly calls for a reply. Neither does the 5th, or additional point, that "the Court erred in dismissing the cross-bill." (Add Brief, p. 12.)

But the Circuit Court committed no error in either respect.

There never were any bonds surrendered to the railway company by Talman and his associates, and converted into stock. (Record, p. 237, 240, 265.) The bonds always remained private property. They were never paid, extinguished, retired or cancelled in any way by the corporation which owed them. They were produced and received in evidence before the master. (P. 160, Master's Report, 138.) The master reported the amount due upon them as a just debt against the cor-

poration. The report stands confirmed, and no error is or can be assigned on that finding. What else the Circuit Court could do except decree a foreclosure of the mortgage for the amount reported to be due by the master, counsel do not suggest.

The remaining position, that something counsel chose to phrase "a contempt of the jurisdiction," has been potent enough to overthrow the confirmed master's report, confiscate and destroy $6,000,000 of first mortgage liens, and leave the appellants, holding $21,000 of utterly worthless bonds, the sole owners or encumbrancers of all this railway property, does not seem to require any answer whatever.

HENRY CRAWFORD,

FEB. 1, 1875. *Solicitor for Appellee.*

Supreme Court of the United States.

GIDEON PUTNAM,
JOHN S. SHAW *Et Al.*, } APPELLANTS,

vs.

CHARLES E. BILL, *Trustee, Etc.*, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

APPELLANT'S REPLY TO STATEMENT AND ARGUMENT OF APPELLEE.

JOSEPH E. McDONALD, SAMUEL A. HUFF,
Attorneys for Appellants.

Supreme Court of the United States.

Gideon Putnam and Stella C. Putnam (his wife) John Savage Shaw, Laura W. Shaw, Laura H. Shaw, Frank E. Shaw, Gideon Shaw, Helen Shaw, James E. Emerson (Administrator of Charles N. Emerson, deceased,) Augusta J. Emerson (Administratrix of Edward B. Emerson, deceased,) Blanche V. Babcock, and Myron N. Babcock (her husband,) Henry W. Shaw and Avery Williams (impleaded in the Circuit Court with the Louisville, New Albany and Chicago Railroad Company, and the Louisville, New Albany and Chicago Railway Company,) APPELLANTS,

vs.

Charles E. Bill, Trustee, etc., APPELLEE.

APPEAL FROM THE CIRCUIT COURT FOR THE DISTRICT OF INDIANA.

Appellant's Reply to Statement and Argument of Appellee.

We ask leave of the Court to present a brief reply to the statement and argument filed in this case on behalf of the appellee.

The recitals in that argument [p.p. 1 and 2] as to the number, amount and order of the several mortgages executed by the New Albany and Salem Railroad Company are correct. But the statements and conclusions in respect to the decree of December 16, 1858, are not fully borne out by the record. It is true that that decree appears to embody an agreement of the parties then before the Court, and this

agreement professedly determines and concludes "all interests under the several mortgages and in the capital stock."

The decree of December 16, 1858, appears to have been intended to conform to the provisions of an interlocutory decree of June 23, 1858. Record, p. 39 to p. 47. This decree embodies a basis of adjustment, which, according to the petition of the trustee, had been agreed to and signed by a majority of the stock-holders, and other bond-holders of the company. Record, p. 42.

The counsel for the appellee, in his statement, [p. 3] says: "By the terms of the decree," [December 16, 1858,] "the last three mortgages are declared extinguished," and that "the only bonds or mortgages executed by the corporation which were left alive by this decree were those of February 8, 1851 and February 14, 1852."

It is thus assumed by the counsel that the decree referred to which he says is a mere agreement between certain parties, is of binding effect upon parties who never assented to it, and who had no notice except by a publication in certain newspapers in Indiana and New York.

There is no pretense that any actual notice of the agreement embodied in the interlocutory decree of June 23, 1858, ever reached Frank E. Shaw, Gideon Shaw and Helen Shaw, nor that the holders of any of the bonds outstanding, amounting, in the aggregate, according to the Master's report to the sum of $712,147 06, interest included, [Record, p. 137,] had any such notice.

But in the Court below, from the time it was ruled that the appellants should be allowed a standing as parties, it was conceded that the holders of bonds and stock who had not made themselves parties to the agreement embodied in the decree of December 16, 1858, were not concluded by that decree. So we present the points we have made in respect to the priorities under the several deeds of trust, as though no

such decree had been recorded, in so far as it relates to the outstanding bonds held by the respective appellants.

We pass by that portion of appellee's statement as to the petition upon which the intervening parties were allowed a standing in Court, and upon which the receiver was appointed to take custody of the property of the company inasmuch as we do not believe it can have any bearing upon the questions to be considered on this appeal.

Nor does it matter how it happened that a foreclosure and sale of the property of the company were procoured through the instrumentality of the White County Common Pleas Court, except as to the effect of that proceeding upon the parties at whose instance the appellee prosecuted his supplemental bill, after that proceeding had been held to be a nullity in view of the *status* of the case in the Court from which this appeal springs.

The real points to be considered here are such as relate to the rights of the appellants as holders of the securities involved in the litigation, as set forth in their cross-bill. This was filed on leave of the Court, [Record p. 182] and it is too late now to question the propriety of that leave. It was filed by the appellants who, according to the report of the Master, then before the Court, held among them, bonds amounting, interest included, to the sum of $50,701 53, and it discloses equities in their favor that entitle them to redress, if it could be afforded consistantly with a fair interpretatation of the language of the several mortgages that preceded those executed to secure these equities.

In our reply to the statement and argument of the counsel for the appellee, we will pass by his comments upon the first and second points, relied upon by the appellants as error, and endeavor to correct some of the statements of the counsel in relation to the questions involved in the third point.

The counsel, [p. 12] courteously charges that in our discussion of these conveyances, "the argument is essentially an unfair one, because it is based upon only a garbled extract from the mortgages." The attention of the Court is called to the language in the printed record, as to the description of property covered by the deeds.

As to that of February, 1851, it will be found on page 284.

As to that of February, 1852, on pages 287 and 288.

As to that of November, 1853, on pages 291 and 292; and

As to that of February, 1855, on page 295.

The quotation in our abstract and statement of points will be found at page 9 of the abstract and statement, and is an exact copy from the description in the deed of February, 1851, as it appears in the printed record; and the description as to each of the succeeding deeds is precisely like it.

In the argument that follows on pages 16 and 17, we endeavored to show that the language in the deed in the case of Pennock vs. Coe, 23 Howard, 117, differs in some respects from that used in the deeds now under discussion, and that this difference favors the interpretation we contend for as to these deeds. We think, if the counsel for the appellee had been disposed to exercise fairness in his discussion, in view of the exact quotation we had furnished in our statement, he might have omitted the harsh expression that our argument is "based upon only a garbled extract."

In that argument we were endeavoring to draw the attention of the Court to the exact question we wish considered, and to show if within the authorities we can show that it has not been decided adversely to our views. We now say, in the light of the authorities cited by the counsel for the appellee, that the exact question under consideration has not been decided adversely; and that, for all that is said in the opinion in

the case of Pennock vs. Coe, it is to say the least, an open question. That case comes nearer the one we now present than any other case cited on the other side. But that case presented no such claim to equitable consideration as this presents.

There the fact is disclosed and reiterated in the opinion, that before the second mortgage was executed the road to which it applied was completed and equipped, and that this had been done with the means derived from the bonds that were secured by the first mortgage. In the present case, in the cross-bill of the appellants, they charge "that at the time these trust deeds of 1853 and 1855 were executed, the bonds known as the 8 and 10 per cent. bonds, and secured by the trust deeds of 1851 and 1852, had been negotiated and the proceeds thereof had been invested in the construction of the said road and in iron rails and machinery for the said road, and the liens of the said trust deeds of 1851 and 1852 attached to said iron rails and machinery so purchased, but they charge that a large portion of the iron rails and machinery necessary for the completion and equipment of said road still remained unpurchased and unpaid for, and they charge that this deficiency was supplied by the bonds issued under the trust deeds of 1853 and 1855, or the funds arising from the sale of said bonds and that the iron rails and machinery so purchased and paid for, were of the value of the bonds negotiated and sold, and that said rails and machinery, or the renewals thereof, are still in and upon said road, and form a part of the tangible property thereof." Record, page 206.

These charges are not denied by the appellee in his answer to the cross bill of the appellants; but they are virtually admitted in this language, quoted from the answer on page 217 of the record: "While this defendant admits to be true, on information and belief that portions of the rails and superstructure on the said line of railroad, and

portions of the machinery have been acquired by purchase since the the date specified in the mortgages of 1851 and 1852, he submits as a matter of law that such after acquired property is fully embraced in and covered by the said mortgages of 1851 and 1852.

Thus was the direct question presented, as a matter of law, with the facts charged admitted; and the Court in its decree dismissing the cross-bill for want of equity, evidently sustained the view of the appellee as to this question of law.

This view of the Court, we believe to be erroneous, and hence we complain that "the appellants, by their cross-bill, under the evidence and according to the uncontroverted facts charged in said cross-bill were entitled to relief; whereas, by the final decree of Circuit Court, their cross-bill was dismissed for the want of equity." And this forms our fifth point; which, though perhaps embraced in the assignment contained in the third point, was added by way of caution, under a stipulation.

This additional point is made in a statement which contains an exact copy of the final decree as to the cross-bill of the appellants, and this final decree dismisses the cross-bill for the want of equity.

See further abstract and statement of points, p.p. 3 and 4.

In this abstract the page of the manuscript record is referred to, and in the printed record the decree appears on page 228.

We are at a loss to see in what way we could have stated the additional point so as better to conform to the rule of the Court on that subject. Nor does it appear to be defective in the light of the decisions referred to by the counsel for the appellee.

The additional point involves the discussion of the equities shown by the averments of the cross-bill. These equities relate to the appellants who are holders of outstanding bonds of the several series of 1853

and 1855, and the income bonds, and also to the appellants who are holders of stock derived by them by the surrender of bonds of the same several series, in the attempt to carry out the provisions of the decree of December 16, 1858.

If the holders of the bonds not surrendered, who are complainants in the cross-bill are not concluded by the decree, and are entitled to recover upon their bonds, whether in priority or subject to those holding bonds of 1851 and 1852, we insist that those who had surrendered and converted are reinstated in all their original rights as bond-holders; because the agreement embodied in the decree contemplated the consent of *all* the parties who were interested as bond-holders and holders of original capital stock in the company. We think this would be the effect of the failure to procure the assent of all the parties in interest, as a matter of law, and the framers of the basis upon which rests the decree of December, 1858, must have had this in view, inasmuch as the 7th clause of that basis, [Record, p. 42] provides as follows: "In the event of the inability to obtain the general consent of all parties in interest, we the holders of the second and third mortgage and income bonds, and six per cent. bonds, in case of a sale of the road by judicial proceedings and the purchase thereof by us or on our behalf subject to the prior mortgages thereon, agree to carry out all the provisions incumbent on as to do by this agreement, it being the intent to carry out the true spirit of this agreement, with all the subscribers hereto, upon like position and terms as if all the stock-holders and several bond-holders subscribed hereto and consummated this ageement without sale."

Doubtless, having failed to procure the consent of all the parties in interest to the agreement, it would have been competent for the trustee to have had his foreclosure and sale, and thus brought before the

Court, at that time, the question of priorities as to all the non-consenting parties in interest.

The consent of all the parties in interest was never obtained; and the case was left as far as the record shows, without any further attempt to carry out the basis, except the entry of the decree embodying it, on the 16th day of December 1858. Its provisions were wholly disregarded by the holders of the bonds of 1851 and 1852, in their attempt to seize the road through the instrumentality of a State Court, and thus to cut off all rights of other parties, as well those who had consented to the basis as those who had not consented to it.

In this attempt they had surrendered their bonds and converted them into the stock of a new company, representing only their bonds of 1851 and 1852. And, while their counsel in this Court, denies that any such surrender was made, and attempts to shield them behind the report of the Master, it is apparent from the record from the testimony taken before the Master and reported by him, before the cross-bill of the appellant's was filed, that the surrender had been made, the organization of the company effected upon such surrender and the stock issued to the parties making the surrender accordingly.

We scarcely needed to resort to the evidence reported by the Master, as the averments contained in the supplemental bill filed by the appellee, inferentially establish the fact of such surrender and conversion. But the evidence taken before the Master is reported by him at length, and appeared in the record at the time the cross-bill of the appellants was filled, and it is not quite certain that it was not competent to be considered on the final hearing of the issue upon that branch of the pleadings.

But it is wholly immaterial, in considering the question of priorities involved in the third and fifth points, whether or not the surrender

and conversion had taken place. Even admitting that the bonds of 1851 and 1852, were at the date of the decree, subsisting and valid securities unaffected and unprejudiced by the conduct of the parties connected with the proceedings in the State Court, the question as to the equity of the cross-bill remains to be considered; and that question is plainly involved in the degree dismissing the cross-bill for the want of equity, and the final decree rendered upon the original and supplemental bills.

While we have left unnoticed the comments of adverse counsel upon the 1st, 2nd and 4th points we present, we do not, by any means, abandon these points. Perhaps, taken without reference to the injustice done by the decree towards parties who have meritorious claims involved, these points might seem technical merely: but considered with reference to the entire case and its anomalous character, we believe it eminently proper that all these questions should be allowed to have their bearing in the review of the record.

True, as stated by the adverse counsel, the claim upon the bonds held by some of the appellants is small in comparison to that embraced in the demand of the parties represented by the appellee. Yet the justice of this small claim is entitled to the same respect in a court of equity as it would be if the amount exceeded the demand of the appellee. Perhaps the appellee and those for whom he especially appears and their council have been waging this litigation on the assumption that the weak have no rights that the strong are bound to respect; and tney seem to be seeking to maintain this assumption by "*a gross and manifest perversion of the record aad testimony.*"

Now, in view of the whole case, we insist that there is equity in our cross-bill and that, therefore, the Circuit Court erred in dismissing it for want of equity.

We further insist that, by the terms of thet rust deeds, it never was intended that those prior in date should operate upon after acquired preperty that might be purchased with means derived from bonds secured by those of a subsequent date; that the very words of the description limited the operation of each deed, in respect to future acquired property, to such as might be purchased with the bonds secured by it, or with money obtained from such bonds. If we are correct in this, we feel safe in claiming a reversal of the decree.

Respectfully submitted,

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